

CAPTURED BY PRIVATE INTERESTS

Adoption and enforcement of
the Law on Conflict of Interests in Montenegro



National Endowment
for Democracy

Title:

Process of Adoption and Implementation of the Law on Conflict of Interest
in Montenegro:
CAPTURED BY PRIVATE INTERESTS

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Design & layout:

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Print:

“Lider” – 069 016 054

Copies:

500

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**Process of Adoption and Implementation
of the Law on Conflict of Interest in Montenegro**

2004 - 2007

**CAPTURED BY
PRIVATE INTERESTS**

Podgorica, 2008

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1. EXECUTIVE SUMMARY

"The lack of guarantees for appropriate control over state institutions and the influence of organized crime in certain spheres of social and economic life further limit the capacity of the state to fight corruption successfully. The lack of an appropriate legal framework to deal with the conflict of interests of officials has a crucial impact."

European Commission, Montenegro 2006 Progress Report

The purpose of this publication is to document the experiences of MANS from 2004 to 2007, in the field of exposing and preventing conflict of interest. This publication consists of three components

- Chronology of events related to adoption of the Law on Conflict of Interest,
- The work of the Commission for Conflict of Interest, and
- Case studies highlighting discrepancies related to implementation of the Law on Conflict of Interest.

Chronology of events related to adoption of the Law on Conflict of Interest

Montenegro was the last country in the region that adopted a Law on the Conflict of Interests. The first section of this publication deals with the attempts to pass a law which was "lost" for two years, when neither the Government nor the Parliament was able to determine where the law was. When the law was finally „found“, it was determined by most of public officers who voted for it to be completely inadequate.

The subsequent attempts to improve the law by a governing parties' parliamentary working group, eventually failed due to consensus of governing and opposition parties to vote against it, which is extraordinarily rare in Montenegro.

This section also documents the prevarication of the ruling party in relation to drafting, discussing and passing the law, and the sometimes farcical attitudes and explanations offered by public officers in that process.

The Commission for Conflict of Interest

During the period from 2005 to 2007, MANS in its role as a watchdog to the work of the Commission for Conflict of Interest, collected data and lodged 136 appeals against public officials. Through this process MANS was able to monitor performance and shortcomings in the Commission's work.

This section commences with data on previous work experience, official reports on property and income submitted by the members of the Commission. It is followed by description of authorities of the Commission, procedure for submitting initiatives for conflict of interest and statistical data.

The final part of this section consist of a case study describing the conflict faced by the president of the Commission, Slobodan Leković, who was at that time member of the local parliament of Podgorica municipality, in determining a resolution related to Miomir Mugoša, Mayor of Podgorica and president of the local parliament, who happened to be from the same party. The case study also highlights the absurd situation that legal procedure for appealing decision of the Commission, even in relation to one of its own members is to resubmit an appeal to the Commission itself, thus putting it in the unenviable position of being its own supervisor.

Second case study is presenting Administrative and Supreme Court decisions on the right to appeal decisions of the Commission.

Case studies

This section sets out to expose the fact, through a series of case studies, that indeed – as many parliamentarians who voted for the law agreed – that the current Law on Conflict of Interest is seriously flawed and that the Commission whose role is to implement the law, does not appear to do so on an impartial or objective bases.

The case studies range from issues related to incompatibility of the function of a Government member as well as judges and other public positions up to and including the Prime minister, to inaccurate reports on incomes, property and gifts, and engagement of public officials in business.

The development of this publication was supported by the National Endowment for Democracy. Opinions given in this publication represent exclusively the views of MANS & need not necessarily correspond to those of the donor.

THEY SAID....

„This represents a much smaller conflict of interest than to secure compensation for that work in some other manner.“

Former Minister of Economy, Darko Uskoković on compensation he recieved for membership in the managing boards, 9 April 2004

„We had management boards that were in conflict with each other, one was, for example, that of the Power Supply Company, and the other of the Aluminium Plant, where there was a direct conflict of interests, one was in favor of having as expensive power as possible and as good a price for electricity as possible, and the other for having as low a price as possible. This was a conflict of a man with himself, and not a conflict of interest of, let's say, those two companies he was to represent. And if we start from such assumptions, it is logical that we reached such a legal solution because in this way we are abolishing a kind of masochism those people were exposed to.“

Ervin Spahić, MP of the Social Democratic Party, 21 April 2004

„You cannot create a good Government with a man earning 350 Euros and you cannot have a responsible committee with 350 Euro. You have to understand that. Noone is mad enough to be a member, to say the truth some of us are mad, but most people should not be mad to do such a responsible job as that of a minister is, and I assume if Milo works 17 hours a day, that a minister must work at least eight or ten hours for 350 Euros. For example, Minister Šturanović, I believe he cannot, I would give my head for that, he cannot buy, if the Government does not buy it for him, a third suit.“

Ljubica Džaković, MP of the Democratic Party of Socialists, 21 April 2004

„It is better for us to have the Law and for that Law to last as long as we are organized and organized well to make good quality amendments to that law or to make a new law which will replace this law, and this means in the following I shall not say a few days, but I must not say nor dare say in the following few months, we must not allow ourselves this.“

Miodrag Vuković, MP of the ruling Democratic Party of Socialists, 16 June 2004

„I do not have, I do not have any savings in domestic or in foreign banks. Also, my relatives do not have it... the relatives I know and whith whom I can talk on that subject. Er, consequently we are not people who would peep into other people's wallets, but if you think that my property could be found on the account of my wife, my son, my brother, or my sister, you are wrong, for there is no propety of mine there, nor their property either.“

Milo Đukanović in an interview at the Croatian National Television, „On Sundays at 2" 13 March 2005

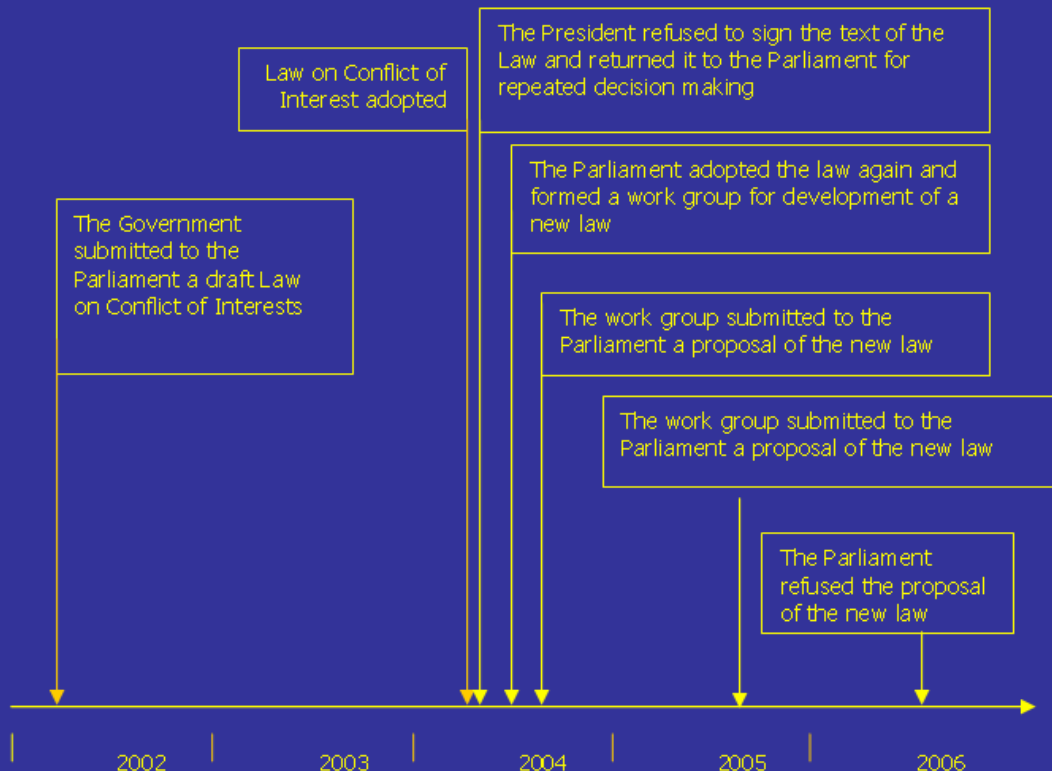
„It is true that in a part of Budva there are four walls and one roof, there is nothing more than the beginning of construction of an undivided buidling object, which might have, if I may say so, a kitchen, a few rooms and maybe some kind of division per square meters might be such. But this was mine for a few... not mine but my daughter's, it was registered on her, for maybe several tens of days.“

Excerpt from an interview with Svetozar Marović in the programme „Whole Truth" shown on „IN" television

„Sometimes it seems to me that Montenegro is covered by a net of a poisonous spider which is made up of a network of mutual private connections, hidden indebtednesses and secret preferences.“

His E. Mr. Thomas Schmitt, Ambassador of the Federal Republic of Germany in Montenegro, 08 December 2007

1. CHRONOLOGY OF EVENTS THAT PRECEDED THE ADOPTION OF THE LAW



"Montenegrin Parliament failed to amend the Law on Conflict of Interest. The existing law contains problematic provisions and needs to be substantially reviewed."

European Commission, Montenegro 2006 Progress Report

"The valid Law on Conflict of Interest should be substantially changed."

European Commission, Montenegro 2007 Progress Report

1.1. The lost law

As early as at the beginning of 2002 the Government submitted to the Parliament a Draft Law on Conflict of Interest for consideration.

According to the statements from the Parliament, in June of the same year the Government withdrew the Draft Law in order to amend it and 20 months later, in April 2004 submitted again the same text to the Parliament.

However, according to the statements from the Government, the law was never withdrawn from the Parliamentary proceedings. Therefore, two years passed during which time neither the Government nor the Parliament was able to determine where the lost law was.

In April 2004 MANS conducted research of the companies record to determine directorships held by members of the Government in order to bring to public's attention the blatant conflict of interest of public officers in carrying out their functions in the interest of citizen. The results have shown that all three Vice-Presidents of the Government and seven Ministers were members of the management boards of 18 companies¹.

The report generated such significant media response that ministers felt obliged to defend themselves publicly, but more significantly, after hiatus of almost two years, the law was „magically“ reintroduced into the Parliament, in the same month.

Ministers' reaction to MANS research

Vice-president of the Government for Economic Policy, Branimir Gvozdenović, member of the Management board of the Power Supply Company of Montenegro (EPCG) and the President of the Tender Commission for privatization of the Aluminium Plant Podgorica (KAP), the biggest consumer of power in the state, in relation to the research conducted by MANS stated that the Government members are on the Management Board of the companies in order to „involve them even more actively into the programs of optimization, privatization and all the activities related to the economic recovery“.

Gvozdenović claims that „he is sure it is owing to his engagement in EPCG that significant results have been achieved“.

The Contract on Privatization of KAP, which Gvozdenovic negotiated as a member of the Tender Commission for Privatization, guaranteed a lower electricity price for KAP than the market one, and in the privatization procedure he accepted that price on behalf of EPCG, as the President of the Board of Directors².



The Minister of Economy, Darko Uskoković:

„I think there is absolutely no conflict of interests if a minister or a Government member represents its interests where the Government has the majority or any kind of ownership. The issue of compensation obtained for that engagement might be a disputable issue. That amount is very clear, public, transparent, everyone knows how much it is“. Still the minister does not state what this amount which „everyone knows“ is. The Minister thinks that „this represents a much smaller conflict of interest than to secure possible compensation for that work in some other manner“, but not saying in what other ways ministers can obtain compensation.

Vijesti, 9 April 2004

¹ The list of members of the government and companies of which they were directors can be found in Appendix 1

Members of the Parliament³ first tried to avoid debating the Draft Law, claiming that, after being „lost“ for two years, the Law should be again withdrawn from the procedure and revised⁴. Still, due to intense media pressure, the Law was finally discussed in the Parliament.

Comments on delays in bringing the law to the Parliament⁵

Veselin Šuković, Director of the Anti-Corruption Agency: ...Draft Law has been in the Parliament proceedings for almost two years. The Government never formally withdrew it from the Parliament proceedings so that all the parliamentary parties had a possibility to give amendments in a timely manner and in writing in order to give a possibility to the proposer to react adequately to them...

Ranko Krivokapić, President of the Parliament and an MP of the ruling Social-Democratic Party (SDP): ...since I am the third President who has inherited this law in the Parliament, I have asked for an explanation. The Government confirmed by an official letter that it remains with the Draft Law on Conflict of Interest, the law was re-activated in the Parliament on 31 March again and it was immediately included into the Parliament agenda of the first possible session so in that the space between three presidents is located the time, and when the confirmation arrived the Law was already at the first Parliament session...

During the discussion, some members of the Parliament have underlined the basic need for the law and essential concerns related to so far practice of public officials holding numerous public functions.

Comments of Parliamentarians regarding conflict of interest of public officers⁶

Ervin Spahić, MP of SDP: ...In 90s for example, we had cases of people who were on nine management boards or six – seven management boards, usually so different that it was really ingenious how those people managed to put that together..We had management boards that were in opposition with each other, one was, for example that of the Power Supply Company and the other of the Aluminium Plant, where there was a direct conflict of interest, in one they strived for the electricity price to be as high as possible, and in the other as low as possible. This was a conflict of a man with himself, and not a conflict of interest of, let's say, those two companies he was to represent. And if we start from such assumptions, it is logical that we have reached such a legal solution because in this way we are abolishing a kind of masochism those people were exposed to...

Borislav Banović, MP of SDP: ...Now, an MP should be an MP, and s/he should learn to do that well, s/he should learn well how laws are made and how executive authorities are controlled, and s/he who wishes to manage companies and something else should learn how this is done, let him/her be paid for that and let them control each other in that performance of jobs....

... With regard to this I say once again, I do not agree with the requests to maintain and have public officials in the management boards of executive authorities.

² Contract on Privatization of KAP was published only in 2007 www.vlada.cg.yu/biblioteka/1175255441.zip

³ During that period the opposition parties boycotted the work of the Parliament, so they did not participate in the debate on the Draft Law on Conflict of Interests.

⁴ This was also a recommendation of the Parliament bodies. Committee for Economy and Finance decided to give a proposal to the Parliament to postpone the debate, and the meeting of the Legislative Committee, after Miško Vuković, an MP of DPS left, was interrupted due to a lack of quorum, so it was claimed that the Draft Law would be withdrawn from the Parliamentary procedure.

⁵ Excerpts from the notes from the Second Session of the First Regular Sitting of the Parliament of the Republic of Montenegro held on 21 April 2004

Comments of Parliamentarians regarding conflict of interest of public officers⁷

Ljubica (Beba) Džaković, MP of the ruling Democratic Party of Socialists (DPS): ... You cannot create a good Government with a man earning 350 Euros and you cannot have a responsible committee with 350 Euros. You have to understand that. No one is mad enough to be a member, some of us are mad to say the truth, but most people should not be mad to do such a responsible job as that of a minister is, and I assume if Milo works 17 hours a day, that a minister must work at least eight or ten hours for 350 Euros... For example, Minister Šturanović, I believe he cannot, I would give my head for that, he cannot buy, if the Government does not buy it for him, a third suit. And now imagine, a minister who does not have three suits...

Rules of Procedure of the Parliament prescribe that amendments are to be submitted prior to the session and that the Parliamentary committees must give their opinion on any amendments, but only three amendments to the Draft law were submitted in the foreseen time limit.

However, at the parliamentary session during which the law was discussed parliamentarians had a sudden attack of zeal, submitting a total of 27 last minute amendments. The amendments were then accepted by the Agency for Fight against Corruption, on behalf of the Government, as part of the proposed legal text. In doing so, they substantially weakened the initial law.

Amongst the changes adopted, was deletion of the article relating to the obligation to publish data on property of public officials on the web site, as the MPs claimed that thus their right to privacy was violated. Also, the officials were allowed to remain in one management board of a company owned by the state. The article obliging persons to report their property based on their relationship with the official was narrowed, so public officers' children who did not live in the same household did not have this obligation⁸. Finally, the submitting of anonymous reports on conflict of interest was also abolished.

Some of the amendments submitted at the session of the Parliament⁹

Daliborka Pejović, MP of DPS: ... Although as MPs we are the proponents of public functions, still the right to privacy is an inviolable right of every individual anywhere in the world, or more precisely in those states that really accept that as universal rights and a universal standard. In relation to this I really think that daily publishing of the Commission reports, dealing with the conflict of interests in Montenegro, to be the subject of web pages or of the Internet, is really unnecessary...
...I propose to put here: as an exception, a public official can be a member of the body of one company owned by the state or the local self-government...

Predrag Bošković, MP of DPS: ...I think I can be in a bigger conflict of interest with somebody who is in my house, who need not even be an adopted child, or a spouse, or a child, but simply someone I let live with me for some reason and I can be in a bigger conflict of interest than with my own child who lives abroad and has turned 18, because the notion of a child implies also someone who is 65 and has a parent who is 85.

⁶ See footnote 5

⁷ See footnote 5

⁸ It is interesting that the same proposal was also put forward by SPS in Serbia, so the son of the then President of that party, Marko Milošević, was not obliged to report his property since he did not live in the same household with his father.

⁹ See footnote 5

All the MPs who spoke on that issue claimed they would vote in favor of law adoption, because of the public pressure, although they were aware that after all changes made during the parliamentary session itself, the implementation of the law will not be possible¹⁰.

Members of the Parliament voting because of public pressure¹¹

Miodrag Iličković, MP of SDP: ...I will immediately make known my view, I will vote in favor of this law, fearing that I would be misunderstood, that by voting against I would prevent the idea the law embodies. I personally think that the law does not resolve sufficiently well or does not elaborate precisely enough the three basic institutes: the public function, the public interest and the conflict of interests...

Ivan Brajović, MP of SDP: ...I wish to say that I am sure that almost all of us will vote in favor of it and support this proposed law. Now see which level we have reached if, in this story, when we speak about the Law on Conflict of Interest, we think that such is the media pressure on the MPs that we must adopt this law...

Ljubica (Beba) Džaković, MP of DPS: ...I say I will vote this law out of party discipline, otherwise I would not personally vote for it because I do not see in it any possibility for implementation. I would not even call it like this, I would call it – needs must when the devil drives...

... That is why I say, this is needs must when the devil drives. I propose to you to understand this law as this, and I am sure you will not implement it, for it is impossible to be as moral as that. I ask myself the question, believe me that I am exactly as a sheep considering the extent to which I am moral, and frequently I ask myself – now what is this, am I normal or am I mad, why do I work this much.

The Law was adopted on 21 April 2004 and 38 MPs voted in favor of it, one abstained from voting, and none of the MPs voted against adoption of the Law.

¹⁰ More detailed information is given in the box

¹¹ See footnote 5

1.2. President returns the law

The President of Montenegro, Filip Vujanović refused to sign the law, which is the Constitutional condition for its coming into force, and returned it to the Parliament for repeated consideration.

He assessed that making it possible for public officials to be members of the management board of a company, owned by the state or the local government, is contrary to the provision which defines the conflict of a private and the public interest.

This is the seventh law, which the President refused to sign after the introduction of the multi-party system into Montenegro and the only not related to electoral system.

President	Year	Law	Note
Momir Bulatović	1997	1. Law on Electoral Register	The mandate of President Bulatović was expiring in 1997
		2. Law on Public Informing	
		3. Amendments to the Law on the Election of the President of the Republic	
Milo Đukanović	2002	4. Law on Election of Councilmen and Representatives	Ruling parties do not have majority in Parliament
		5. Law on Public Informing	
		6. Law on Presentation of Submitters of Electoral Lists	
Filip Vujanović	2004	7. Law on Conflict of Interest	Ruling parties have absolute majority in Parliament

Letter of the President of Montenegro, Filip Vujanović to the President of the Parliament

Based on Article 89 paragraph 2 of the Constitution of the Republic of Montenegro, I forward to the Parliament for repeated decision making the Law on Conflict of Interest which was adopted at the second session of the first regular sitting of the Parliament of the Republic of Montenegro on 21 April 2004.

The following are the reasons for which I deem that a repeated considering of the law is necessary:

Provision of Art. 15 paragraph 1 of this law prescribes that a public official cannot be a member of a company, except for a shareholders assembly. Provision of paragraph 2 of the same Article prescribes that a public official can exceptionally be a member of the body of one company owned by the state or the local government. I deem that provision of paragraph 2 of Article 15 of this law is in direct conflict with the provision of Art. 18 of the same law which prescribes that a public official can be a member of non-government organizations and other legal entities which perform scientific, humanitarian, cultural sport and similar activities, with the condition that they receive compensation only for travel and other similar expenses.

I believe that this condition is in compliance with the essence of the institute of avoidance of conflict, of public and private interest which is prescribed by provision from Art. 1 of this Law. By not prescribing the same condition in the provision of paragraph 2 Art. 15 of the same law these two legal provisions come into conflict with each other. The disputed provision is in conflict with the provision of Art. 1 of the law for the quoted reason.

Therefore I deem a repeated decision making on the law is necessary.

1.3. Better to have a bad law...

Since the President refused to sign the Law on Conflict of Interest - based on an internal contradiction between articles of the Law - the Parliament was obliged by the Constitution to re-consider the law, and if it was adopted again, the President would be obliged to sign and promulgate the law.

There existed two different interpretations regarding the returned law. One opinion stated that it was possible to amend the legal text to remove the internal contradictions described by the President. A second explanation was that due to Constitutional procedures, the Parliament was not able to amend the law, but simply to vote again on entire text of the previously adopted law.

When the law was returned to the Parliament, based on the first opinion, 25 new amendments to the Law were accepted, but then the Parliament took the view that a decision was to be made on the entire law and the amendments could not be submitted.

Confusion in the Parliament regarding the correct procedure¹²

Ranko Krivokapić, President of the Parliament and an MP of the ruling Social-Democratic Party (SDP): In accordance with his constitutional authorities the President of the Republic did not promulgate this law, but in compliance with the authorization from Article 89 paragraph 2 of the Constitution of the Republic, he requested the Parliament to make a new decision on the Law, indicating reasons for this...

... I wish to remind that after that some MPs, the MP Krsto Pavicevic, put forward 23 amendments and MPs Predrag Sekulić and Rajko Kovačević one amendment...

...Repeated decision making of the Parliament means that the Parliament must make a decision on the entire Law, with the MPs either accepting it and making it sustainable and valid, or refusing it on the whole. The amendment procedure was not possible for this would create a new text of the law, which would make it impossible to the President of the Republic to return the Law which would actually be a changed Law with the acceptance of the amendments procedure...

Krsto Pavićević, MP of the Civic Party: ...Then we should not have put forward amendments, i.e. we should not have been allowed even to put forward amendments ...

Ranko Krivokapić: The mistake is that we are encountering such a case for the first time. We had to find a criteria...

On 16 June 2004 MPs confirmed the adoption of the Law on Conflict of Interest, which made it possible to the public officials to remain in one management board, with the explanation that it is better to have a bad law, than no law at all¹³.

The Law on Conflict of Interest came into force on 30 June 2004.

¹² Excerpts from the notes of the Third session of the first regular sitting of the Parliament of RoM, from 16 June 2004.

¹³ 38 MPs voted, 28 for, 4 against and 6 abstentions

1.4. Obstructing a better law

Ironically, at very same the session of the Parliament on 16 June 2004, at which the Law on Conflict of Interest was adopted, the Parliament formed a working group to make a better law.

Members of the Parliament on establishment of the working group

Miodrag Vuković MP of the ruling Democratic Party of Socialist: We will immediately form a working group of the Parliament of the Republic of Montenegro, which will consult all the international and domestic experts who are interested in making this law as good as possible and certainly of better quality than as it was adopted and as we propose it to be confirmed in this parliament, in order to obtain a good quality law through the procedure of amendments to the existing law... It is better for us to have the Law and for that Law to last as long as we are organized and organized well to make as soon as possible good quality amendments to that law or to make a new law which will replace this law, and this means I shall not say in the following few days, but I must not say nor dare say in the following few months, we must not allow ourselves this."

Krsto Pavićević MP of the Civic Party: ...Regarding the proposal to establish a commission to work on this law i.e. amendments to this law, with one suggestion, and that is to set a time limit for the work of that commission, i.e. to know the deadline by which that commission must finish work, in order to avoid the situation in which the commission works too long, and the law again stays in the Parliamentary procedure for a long time...

The working group held the first meeting in October 2004, and during eight months work the President of the working group, Krsto Pavićević complained publicly several times of obstructions he faced. The problems culminated in refusal of the legal service of the Parliament to provide the obligatory expert assistance to the working group in the development of the final version of the law.

In October 2005 the working group submitted the Draft Law to the Parliament which waited for eight months after that to be included into the Parliament agenda, so at the beginning of July 2005 MANS sent an open letter to the President of the Parliament.

Excerpt from MANS open letter to the President of the Parliament on July 4th 2006

We are surprised that, as the President of the Parliament and the President of the party which after proclamation of independence of Montenegro proclaimed the fight against corruption its priority, you are still refusing to include the new Law on Conflict of Interest into the Parliament agenda...

...Deeming that the valid Law is so bad that it cannot be harmonized with the European standards through amendments, despite numerous obstructions, the working group developed an entirely new Draft Law on Conflict of Interest in performance of public functions as early as in October 2005.

Since October 2005 the new Law on Conflict of Interest has been gathering dust in your drawer.

Your persistent refusal to include the new Law into the Parliament agenda makes it possible to public officials to put their private interest before the public one, while the functions of the State and its institutions thus lose sense...

...Apart from mere rhetoric, we expect concrete actions and ask you as the President of the Parliament to include through an urgent procedure the Law into the Parliamentary proceedings.

After the publishing of our open letter the President of the Parliament included the Draft Law on Conflict of Interest into the agenda of the first following session.

The President of the Parliament used his discretionary powers to actively obstruct discussion on the Law. Firstly, in the middle of the regular session at which the the Draft law was to be discussed the President scheduled a new extraordinary session of the Parliament to start on 27th of July. Secondly, just before the scheduled debate of the Law, on Thursday 26th, the President changed the agenda of the ongoing, regular session, demoting the law to the last item of the agenda.

According to the Rules of Procedure, the regular sessions have to be completed by July 31st, only two working days remained for a new, extraordinary session.

Since the President of the Parliament did not determine when the interrupted regular session was to be continued, whether and when the debate of the Draft Law on Conflict of Interest would be held, he effectively reduced to a minimum the possibility of the Parliament deciding on the law.

On July 27th 2006, MANS again addressed the President of the Parliament by an open letter, asking him to provide adequate time for the MPs to declare themselves on the new Draft Law.

Excerpt from the open letter to the President of the Parliament from July 27th 2006

Hereby we are expressing a strong protest because of the obvious intention to avoid the adoption of the new Law on Conflict of Interest in performance of public functions.

We are addressing you as the President of the Parliament who used his discretionary right by scheduling during one regular session a second, also regular session of the Parliament, and did so precisely before the debate on the new Law on Conflict of Interest in performance of public functions.

By a unilateral decision you interrupted the current regular session with another "regular" session, without fulfilling the obligation to determine whether and when the first one was to be continued, knowing that according to the Rules of Procedure, the Parliament ends the sessions at the end of July.

After that, you used again the discretionary authorization and by a unilateral decision changed the agenda of the current session, so that the MPs discussed elections and appointments, as the last item of the agenda, while the debate on the Law was left for the very end of the session.

As the regular sessions of the Parliament have to end by the end of the month, and it is not known how long the second "regular" session will last, everything obviously points to the intention to avoid the declaring of MPs on the new Law and to postpone its adoption by several months....

...Indisputably, the new Draft Law represents an incomparably better base for struggle against corruption, than the existing one. It abolishes numerous benefits the public officials currently enjoy, which can lead to putting of the private interest before the public one, while the new structure of the Commission for Determining the Conflict of Interest should provide bigger independence in decision making, and the penal provisions finally bring mechanisms to provide for implementation of the law.

As such, the new Law obtained a very positive assessment from the Council of Europe, and the importance of its adoption was stressed also in the documents of the European Commission.

It is impossible not to notice the drastic difference between your rethoric and practice, for while you are stressing the struggle against corruption as a priority, at the same time by using discretionary authorizations you actively sabotage the adoption of one of the main anti-corruption laws.

The least we expect you to do according to the obligations you have by the Rules of Procedure, is to schedule the continuation of the meeting and to make sure that the MPs give their opinion on the new Draft Law on Prevention of Conflict of Interest in the performance of public functions.

On the last working day, July 31st 2006, having failed to obstruct the discussion on the new and substantially improved Law, the Parliament voted. After eight months of redrafting the law and eight more months waiting to be discussed, parliamentarians claimed that the Law was not in compliance with the Constitution and both the MPs from the ruling and from the opposition parties refused to adopt the law.

Obstructions and excuses¹⁴

Krsto Pavićević, MP from Civic Party and president of the Working Group drafting the new Law: ...A multi-party working group was formed which worked for quite a long time, had obstructions in its work and in the end finished this draft law. It entered the proceedings in November last year. Here it is being debated today... I will try during these ten minutes to quote a few novelties this draft law offers, which apart from me were submitted to the Parliament also by Predrag Sekulić on behalf of Democratic Party of Socialists, Mr Džavid Šabović on behalf of Social-Democratic Party and Mr Ferhat Dinoša on behalf of the Club of Albanian Parties...

By this law the notion of a public official is defined more widely than before. According to this law a public official cannot perform two public functions. Also, a public official cannot be engaged in a state or a private company, any part of it, if that company does work with the public authorities, whether at the level of the republic or the local level, which is a new thing...Regarding the public officials, they cannot enter any kind of contract, not even as advisors of public or private companies, nor can they conclude any contracts on personal services with the public companies and those companies that do business with the public authorities...

... As for the other measures those are penal measures pronounced by the Commission – warning, fine, the proposal for acquittal and the ban of nomination for a public function for a period of 4 years.

It is very probable that this legal text has not been polished, here I agree with you, for the legal service of the Parliament in some way refused to consider this legal text to the last, although it was obliged to do so. Even the person who was delegated by the President of the Parliament to help us, who worked in this working group, in the end did not want to help us with the formulation of particular Articles.

Dragan Šoć, MP of the opposition party, the People's Party: We cannot support this law because it so obviously violates the Constitution of Montenegro that we simply cannot overlook that...Article 24 constitutes immunity for Commission members. I remind you that immunity is constituted by the Constitution and that it cannot be extended beyond the Constitution. Even the Court cannot ban to anyone to be nominated for an MP, not even the Court. It is a right constituted by the Constitution, and you want to give the right to a Commission to say – you cannot be a candidate.

Miodrag Vuković, MP of ruling Democratic Party of Socialists (DPS): When we voted for this Draft Law to enter the agenda, we in the club of DPS were aware of the fact that it was not possible to implement the law. In the meantime, the public reacted, the non-government organizations reacted, criticizing without reason the allegedly speculative policy of DPS to postpone the debate on this law. No, we were delaying the debate on this law in order to possibly eliminate its legal deficiencies or to eliminate what was contrary to the legal order, and which prevents one good idea - to come out of an insufficiently good law, which we now have, and to reach a better law.

¹⁴ Excerpt from the notes of the Third session of the first regular sitting of the Parliament from June 16th 2006

Media reporting on cross-party consensus to obstruct the law

Excerpt from an Article from the weekly "Monitor", from 4 August 2006

The need for as rapid as possible inclusion of Montenegro into the processes of European-Atlantic integrations is one, if not the only, issue on which the local political elite could reach a wide consensus. When the time comes for this. This is something the party leaders and their spokespersons are every day convincing us to believe.

In real life things are different: when they are to defend their own privileges Montenegrin politicians do not have a problem to overcome the ideological differences and personal animosities.

This has been shown also by this week's debate on the Draft Law on Conflict of Interest in performance of public functions, conducted in the Parliament of Montenegro. Through a synchronized and efficient action of the parliamentary majority consisting of the MPs of the ruling and the opposition parties the offered proposal was rejected. Ones were against, the second ones abstained, the third ones were not in the hall when one of the most important anti-corruption laws was voted on. Anyway, only 12 MPs voted in favor and the existing Law on Conflict of Interest remains in force.

* * *

The Draft Law is bad and it is contrary to the Constitution, claimed Miodrag Vuković and Dragan Šoć. The opposition and the authorities, united, state – it is unconstitutional to punish the state officials who do not respect the law; members of the Commission for Prevention of Conflict of Interest cannot have immunity and the salary equal to that of MPs (not a word of the fact that MPs on the Boards of Directors earn several salaries, and that the representatives of Montenegrin legislative and executive authorities practically cannot lose immunity, MP Šoć and Minister Pavličić¹⁵ being witnesses to this); the state officials cannot be limited the possibility to receive presents and formal questioning of the propriety registered to the members of their immediate and extended family.

Excerpt from an Article from daily "Vijesti", August 3rd 2006

Still, no matter whether the objections of MPs to particular allegedly unconstitutional provisions are in place, the question remains why MPs, in particular those from DPS, whose representative worked on the law, waited for two years to say at the plenary why the law was not good.

Šoć responded as follows to the question why he did not earlier react to such a text, with regard to the fact that it had been worked on it for two years: "I received the text just as I receive all the other materials, but I do not know that someone of ours worked on that text. If it were not for that provision, I would have supported everything else."

Vuković designated Krsto Pavićević as the direct culprit for „such a state“ of the draft law, for he did not want to accept any suggestions. "During ten days I suggested to Krsto that we should change something and I told him that the law was disastrous....I talked to him in the hallways. I told him he had to review the suggestions and correct something. But he stuck to the motto that the Council of Europe supports and gives its consent to the law" Vuković said.

¹⁵ The Supreme State Prosecutor submitted to the Parliament a request to remove immunity to the MP Šoć and Minister Pavličić because of doubts that they have committed criminal acts of abuse of the official position, but the Parliament did not remove their immunity.

2. COMMISSION FOR CONFLICT OF INTEREST

"The Law does not include a restriction for the President and other members of the Commission for Conflict of Interest with regard to their membership in political parties or elected bodies, such as the municipal assembly. GRECO evaluation team recommends to determine ways to reduce a possible political influence on the decisions made by the Commission for Determining Conflict of Interest."

GRECO report on evaluation of anti-corruption measures and activities in Montenegro

Short CVs, publicly declared assets and income of the members of the Commission

 <p>Slobodan Leković, Commission President</p>	<p>Qualifications: Faculty of Economics in Podgorica, 1971</p> <p>Work experience:</p> <ul style="list-style-type: none"> -Member of the temporary management body in the specialized work organization «Protection» Podgorica) 1977 – 1978) -Senior advisor, Republican Committee for Tourism (1980 – 1984) -Senior advisor, Republican Secretariat for Economy (1984 – 1991) -Secretary of the Tourist Association of Montenegro (1991 – 1994) -Assistant to the Minister of Tourism (1994 – 2004) -Deputy in the Municipal Assembly Podgorica (1969 – 1974) -Deputy in the Municipal Assembly (2003 – 2007) 	<p>Immovables: flat, Podgorica 75 m2; house, village Godinje, Virpazar 256 m2; land, village Godinje, Virpazar 19.502 m2</p> <p>Movables: Jugo 45, year 1982</p> <p>Monthly salary: 804 Euros</p> <p>Other annual revenues: Wine-growing - 2000 Euros, fruit and vegetable growing - 1000 Euros, book publishing - 1000 Euros, member of the Commission of the Pension Fund - 1500 Euros</p> <p>Other household members: do not have revenues or property</p>
 <p>Slobodan Dragović, Commission member</p>	<p>Qualifications: Law Faculty in Sarajevo,</p> <p>Work experience:</p> <ul style="list-style-type: none"> -trainee, and then an advisor in the Legal Department of the company "Industrijaimport" (1973 – 1977) - employed in the Service of the Parliament of Montenegro as: advisor for political system; advisor to the Parliament Secretary; Secretary of the Commission for Constitutional Issues, Secretary of the Commission for Control of the Work of the State Security Service - Assistant to the Secretary General of the Parliament (1991 – 1999) - Deputy of the Secretary General of the Parliament (1999 – present) -Secretary of the Republican Electoral Commission (2003 – present) 	<p>Immovables: Flat, Podgorica, 87 m2, Land, Danilovgrad, Martinići, 4000m2</p> <p>Movables: Opel, year 1989</p> <p>Monthly pay: 625 Euros</p> <p>Other revenues per year: revenue from the Republican Electoral Commission 4000 Euros,</p> <p>Other household members: Wife: pension 100 Euros per month; Son: Audi 4, 1997 year, monthly salary 150 Euros; Daughter: Fiat Uno, year 1988, monthly salary 150 Euros</p>



Ivo Đoković,
Commission
member

Qualifications: Law Faculty
in Podgorica, 1982

Work experience:

- trainee, and then Head of the Service for General and Legal Affairs in Agrokombinat "13 jul" (1986 – 1993)
- Secretary of the Faculty of Economics and the Head of the Administration of Faculty of Economics (1993 – present)

Immovables: Flat 30 m2, Budva; flat 66 m2, Podgorica; land 49 acres and support building 17 M2, Župa, village Jugovići

Movables: Skoda Oktavija, 1999 year and Lada Samara year 1990

Monthly pay: 370 Euros at the faculty + 200 Euros in the Commission

Other revenues per year: Intellectual services 1 800 Euros

Other household members: wife: monthly salary 390 Euros



Željka Vuksanović,
Commission
member

Qualifications: Law Faculty
in Podgorica, 1982

Work experience:

- Local government of Municipality Kolašin – property-legal affairs, work inspection, general administration, and social activities (1982 – present)
- Deputy in Municipal Assembly Kolašin (present)

Immovables: flat - 67 m2 (1/2), Kolašin

Movables: none

Monthly pay: 393 Euros + 200 Euros in Commission + deputy compensation 100 Euros

Other revenues: none

Other household members: Husband: house 140 m2 (1/2), Trebaljevo, Kolašin; land 7 Ha (1/4), Trebaljevo; flat, 67 m2 (1/2), Kolašin, car Jugo, year 1989. Son: land 1 000 m2, Jezerca, Kolašin



Tahir Gjonbalaj,
Commission
member

Qualifications: Faculty of Civil Engineering in Priština, 1990

Work experience:

- Secretary for land development, property legal relations and protection in Municipality Plav

Immovables: Flat 50 m2, Vuhtaj, Vusanje, flat 325 m2 (1/2), Gusinje

Movables: Golf, year 1983

Monthly pay: 340 Euros + 200 Euros in the Commission

Other revenues: Private supervision of works and execution of works, 450 Euros per month, agriculture 3000 Euros per year, construction 4500 Euros per year

Other household members: Wife: revenues from agriculture 2000 Euros per year, national costume 3500 Euros per year

During the period from 2005 to 2007, MANS in its role as a watchdog to the work of the Commission for Conflict of Interest, collected data and lodged 136 appeals against public officials. Through this process MANS was able to monitor performance and shortcomings in the Commission's work.

This section commences with data on previous work experience, official reports on property and income submitted by the members of the Commission.

It is followed by description of authorities of the Commission, procedure for submitting initiatives for conflict of interest and statistical data.

The final part of this section consist of a case study describing the conflict faced by the president of the Commission, Slobodan Leković, who was at that time member of the local parliament of Podgorica municipality, in determining a resolution related to Miomir Mugoša, Mayor of Podgorica and president of the local parliament, who happened to be from the same party. The case study also highlights the absurd situation that legal procedure for appealing decision of the Commission, even in relation to one of its own members is to resubmit an appeal to the Commission itself, thus putting it in the unenviable position of being its own supervisor.

Last case study is presenting Administrative and Supreme Court decisions on the right to appeal decisions of the Commission.

2.1. Establishment the Commission for Conflict of Interest and its Legal Authority

The Montenegrin Commission for Conflict of Interest has a President and four members elected by the Parliament for a period of five years, with the possibility of re-election.

According to the Law, the President and the members of the Commission are persons who have proved they are impartial and conscientious by their professional, work and moral qualities, and at least one member must have a BA in Law and have passed the state exam. The Commission President and members receive compensation, the amount of which is determined by the National Parliament.¹

The Law on Conflict of Interest gives to the Commission the following authority

1. to determine facts and circumstances necessary for making a decision whether a public official has violated the Law on Conflict of Interest;
2. to make an informed decision on the existence or non-existence of conflict of interest;
3. to determine the value of presents;
4. to keep Records of reports on revenues and property;
5. to adopt the Rules of Procedure;
6. to perform other jobs, in accordance with this law, such as
 - upon a request of an official who suspects to be in a situation which implies a conflict of interest, the Commission shall give an opinion
 - assess whether a public official has been influenced or has been subject to an unlawful action, upon a request of a public official
 - inform the State Prosecutor of the Republic of Montenegro in case a public official has not reported the revenues and property he obtained during his mandate
 - assess whether a public official can perform some other job as well, i.e. whether this causes conflict of interest²

¹ Article 18 of the Law on Conflict of Interest

² Article 6, 7, 11, 14 and 19 of the Law on Conflict of interest

The Law on Conflict of Interest came into force on June 30th 2004. On July 29th 2004 the Parliament made a Decision on Establishment of the Commission for Determining of Conflict of Interest and the election of the President and the Commission members.

The Commission started work on August 30th 2004, and only on February 1st 2005 work space was provided so seven months after the Law come into force it began to process reports on revenues and property of public officials and to make decisions on reports and initiatives.

The Law on Conflict of Interest prescribes that the initiatives for determining conflict of interest are submitted to the Commission for Conflict of Interest.

Ironically, the Rules of Procedure of the Commission, developed and adopted by the Commission itself, state that in a case where a party is not satisfied with the decision of the Commission, they may submit a request for reexamination of the Commissions' decision to the Commission itself.

The decision of the Commission upon this reexamination, according to the Commissions' rules, can only be challenged at the Administrative Court³.

2.2. Statistical data on the work of the Commission following the initiatives of MANS

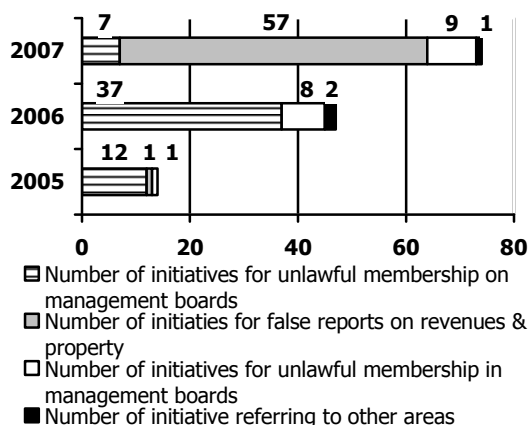
During the period from 2005 to 2007, MANS in its role as a watchdog to the work of the Commission for Conflict of Interest, collected data, lodged appeals to monitor performance and shortcomings in the Commission's work. MANS submitted over 95 % of the total number of submitted initiatives for determining conflict of interest. In 2005 and 2006 only MANS submitted initiatives, while in 2007 4 additional initiatives were submitted by other legal and physical persons. Statistical data given in this section refer only to decision of the Commission in relation to MANS initiatives.

2.2.1. Types of initiatives submitted

From the beginning of work of the Commission for Conflict of Interest until the end of 2007, MANS submitted 136 initiatives for determining conflict of interest of which 41% referred to unlawful membership of public officials in management boards of companies, 43% to false reports on property and revenues, 14% to performance of incompatible functions, and 2% to other areas.

Year	Initiatives for unlawful membership on management boards		Initiatives for false reports of revenues and property		Initiatives for performance of incompatible functions		Initiatives referring to other areas		Total number of initiatives submitted
	no	%	no	%	no	%	no	%	
2005	12	86%	1	7%	1	7%	0	0%	14
2006	37	77%	0	0%	9	19%	2	4%	48
2007	7	9%	57	77%	9	13%	1	1%	74
Total	56	41%	58	43%	19	14%	3	2%	136

³ Rules on the procedure before the Commission for establishment of Conflict of Interests, Article 32. Further information can be found in second case study provided in this section.



During 2005 MANS submitted to the Commission 14 initiatives for determining conflict of interest of which 86% referred to unlawful membership of public officials in management boards of companies, 7% referred to false reports of income and property and 7% to performance of several incompatible functions.

In 2006 a total of 48 initiatives were submitted, and somewhat smaller percentage than the previous year referred to unlawful membership of public officials in the management boards of companies (77% of the total number of submitted initiatives), 19% referred to performance of several incompatible functions, 4% to other areas, and none of the initiatives was submitted for false report of revenues and property.

During 2007 the structure of submitted initiatives changes and owing to the adoption of the Law on Free Access to Information and publishing of the data on ownership of property at the website of the Direction for Real Estate, most initiatives for determining conflict of interest (77%) refer to false reporting of revenues and property. Since owing to our reports most public officials left the management boards of companies, only 9% of initiatives submitted in 2007 referred to that form of law violation, 13% referred to unlawful performance of several public functions and 1% referred to other forms of law violation.

2.2.2. Decision of the Commission for Conflict of Interest

In the period from 2005 to 2007, the Commission determined for 71% of submitted initiatives that public officials did not violate the Law, and only in 15% of cases that they violated the Law, and for 14% of submitted initiatives the Commission has not yet made the decisions.

Year	Did not violate the law		Violate the law		Decision has not been made		Total
	No	%	No	%	No	%	
2005	14	100%	0	0%	-	0%	14
2006	37	77%	11	23%	-	0%	48
2007	46	62%	10	13%	18	25%	74
Total	97	71%	21	15%	18	14%	136

In 2005 the Commission determined there was no violation of law for all the submitted initiatives, and the same decision was made for 77% of initiatives submitted in 2006 and 62% if initiatives submitted in 2007.

2.2.3. Decisions of the Commission upon request for reexamination of the Commissions' decisions

A complaint can be lodged against the decision of the Commission for Conflict of Interest to the Commission itself. From the beginning of 2005 till the end of 2007, MANS submitted 44 requests for reconsidering the decisions of the Commission and in the second instance procedure the Commission made decisions on 23 requests for reconsidering and did not annul any of its first instance decisions.

Year	Number of confirmed decisions	Number of annulled decisions	Decisions that were not made	Number of requests for reconsideration
2005	3	0	-	3
2006	7	0	-	7
2007	13	0	21	34
Total	23	0	21	44

2.2.4. Notifications to the State Prosecutor

According to the Law, the Commission is obliged to inform the State Prosecutor on unlawful acquisition of revenues and property. Since its constituting the Commission has forwarded a total of 5 notifications to the State Prosecutor of which 4 are based on the decisions which the Commission made following the initiatives of MANS.

All the notifications were submitted because of unlawful acquisition of revenues based on membership in the management boards of companies, one refers to a republic officials, and 4 to local officials.

The Prosecutor did not react to the forwarded notifications.

2.3. Case study 1: Conflict of Interest of the members of the Commission

One of the key challenges faced by the Commission is that they are given the authority and responsibility to make decisions on conflict of interest related to members of their own political parties, and in some cases their employers or supervisors. This case study describes the conflict faced by the president of the Commission, who was at that time member of the local parliament of Podgorica municipality, in determining a resolution related to the Mayor of Podgorica and president of the local parliament, who happened to be from the same party.

On the first day of work of the Commission, on February 1st 2005, MANS submitted two initiatives for determining conflict of interest regarding the President of the Municipal Assembly of Podgorica Miomir Mugoša and the President of the Commission for Determining Conflict of Interest, Slobodan Leković.

The first initiative against Miomir Mugoša was submitted based on Article 15, paragraph 1 of the Law on Conflict of Interest, which prescribes that a public official cannot be a member of a company body, except for the shareholders assembly. The initiative stated that Miomir Mugoša was the President of the Municipal Assembly of Municipality Podgorica and a MP of the Democratic Party of Socialists, and that at the same time he was also a member of the Board of Directors of the Clinical Hospital Centre, of Hemomont and ICN Galenika, President of the Board of Directors of "Tennis club AS" and the President of the shareholders assembly of "Podgorička banka" AD.

The second, and linked, initiative was submitted against Slobodan Leković, President of the Commission for Determining Conflict of Interest which stated that Leković was in a position of conflict of interest in case of consideration of the initiative for Miomir Mugoša. It was stated that Leković was a member of the local parliament of Municipality Podgorica and a member of the Democratic Party of Socialists, while Mayor Mugoša was the President of the Municipal Assembly and a member of the same party. It was argued that for this reason Mr. Leković would not be in a position to make an objective decision in his position of the President of the Commission for Determining Conflict of Interest.

On the following day Mayor Mugoša reacted publicly to MANS appeal confirming his membership in management board of "Hemomont" and the presidency of the assembly of shareholders of "Podgorička banka". According to the Law on Conflict of Interest, public officers are not restricted from being presidents (or members) of assemblies of private companies, even though these bodies elect boards of directors. In relation to the other three companies⁴, the Mayor explained that he had either resigned or his mandate had expired, so he was simply performing the function of board member until new members were elected. In some cases, the process of election on new board members required several months or even several years.

Slobodan Leković, President of the Commission for Determining Conflict of Interest announced on February 3 that he was not going to do anything as regards the initiative of MANS, since the Commission had no conditions for work, since the funds from the budget of the National Parliament had not yet been secured:

«We will not do anything at the moment, because there is no one to work. We cannot do it on our knees.»⁵

⁴ ICN Galenika, the Clinical-hospital centre and "Tennis club AS"

⁵ Slobodan Leković, President of the Commission for Determining Conflict of Interest, «Vijesti», 03 February 2006

On February 4th 2005 MANS asked from the President of the National Parliament, Ranko Krivokapić to provide conditions for law implementation and ask to relieve from duty President of the Commission for Determining Conflict of Interest if he performs his duty unconscientiously.

Three months after the initiative was submitted, on 28 April 2005 the Commission made decisions by which it states there is no conflict of interest or other law violation by Miomir Mugoša.

"It has been determined that dr Miomir Mugoša is the President of the Municipal Assembly Podgorica, MP in the Parliament of the Republic of Montenegro and a member of the management board of "Hemomont d.o.o." and that he is not a member of other bodies quoted in the Initiative for starting the proceedings, thus there is no other violation of the Law."

Decision of the Commission regarding the Miomir Mugoša case
28 April 2005, number 218/14⁶

On the same day, the Commission also determined in relation to its own chairperson Slobodan Leković that there was no conflict of interest or violation of the law based on MANS appeal.

«The Commission has determined there is no conflict of interest or other violation of the Law on Conflict of Interest by Slobodan Leković if he participates, as the Commission President, in the decision making on the existence of conflict of interest of other public officials, thus also on the conflict of interest for dr Miomir Mugoša.

Namely, in terms of the Law on Conflict of Interest, conflict of interest exists when a public official puts his private interest before the public interest, in order to obtain material gain for himself or persons related to him, and the Law is violated, if he acts contrary to the prescribed duties, limitations and bans.

The Law on Conflict of Interest does not foresee existence of conflict of interest, nor a possibility of existence of that conflict or other violation of the Law due to the fact that the President or a member of the Commission belongs to the same party or is a member of the Parliament of which the official on whose conflict on interest it is being decided is a member or president.»

Decision of the Commission regarding the Slobodan Leković case
28 April 2005, number 209/3⁷

Since the only legal procedure for appealing decision of the Commission, even in relation to one of its own members is to resubmit an appeal to the Commission itself, thus putting it in the unenviable position of being its own supervisor. On May 9th 2005 MANS submitted requests for reconsidering decisions of the Commission to the Commission itself, on the initiatives for starting proceeding for determining conflict of interest for Miomir Mugoša and Slobodan Leković, but the Commission confirmed the first instance decisions.

⁶ http://www.konfliktinteresa.cg.yu/rjesenja/odluka_mugosa.htm

⁷ http://www.konfliktinteresa.cg.yu/rjesenja/odluka_s_lekovic.htm

2.4. Case study 2: Administrative and Supreme Court decisions on the right to appeal decisions of the Commission

In a test case submitted by MANS to the Administrative Court, the Court rejected the appeal for termination of the decisions of the Commission. The Administrative Court in its decision stated that MANS did not have the right to file charges, since the decision of the Commission did not violate MANS's rights or interests based on the Law. The Court ruled that the right to bring charges exists only for public officials whom the Commission's decisions refer to.

Decision of the Administrative Court made on April 3rd 2007

Po nalaženju Suda, u konkretnom slučaju, ovim su iscrpljena pravna sredstva koja tužilac može da koristi u postupku pokrenutom po njegovoj inicijativi, budući da osporenim odlukom nije povrijeđeno bilo koje pravo ili na zakonu zasnovani interes tužioca.

Sud također smatra da bi se o povredi nekog prava ili na zakonu zasnovanog interesa, pa time i prava na pokretanje upravnog spora, moglo govoriti, kada bi tužilac bilo koje lice iz člana 2. Zakona o konfliktu interesa, za koga je Komisija utvrdila da je u konfliktu interesa.

Iz navedenih razloga, a na osnovu člana 22. stav 1. tačka 3. Zakona o upravnim sporu, riješeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 03.04.2007. godine

Zapisničar,
Marina Nedović, s.r.

PREDJEDNIK VJEĆA,
Ljubinka Popović-Kustudić, s.r.



According to the findings of the Court, in the concrete case, this makes all legal instruments used that a Prosecutor may use in the procedure initiated at his/her initiative, since the decision cancelled no right was violated neither any interest of the Prosecutor based on the law.

The Court also believes that violation of the right or interest based on law and thus the right to initiate the administrative procedure would exist if the prosecutor would be any person from Article 2 of the Law on Conflict of Interests whom the Commission for Establishment of Conflict of Interests has found to be making conflict of interests.

Following this judgment, MANS submitted a request for an extraordinary reexamination of the Administrative Court's decision to the Supreme Court. The Supreme Court terminated the decision of the Administrative Court and took a standpoint that MANS, as an entity that submitted an initiative to the Commission, had the right to bring charges to the Administrative Court in case they were not satisfied with decisions of that institution.

Decision of the Supreme Court made on September 14th 2007

spora, tj. da više nije stranka u smislu čl.3. st.1. Zakona o upravnim sporu.

Dobijeno nesporno svojstvo stranke u upravnim postupku po pravilu se ne može izgubiti u upravnim sporu, jer ako je određeno lice imalo na zakonu zasnovani pravni interes za vođenje upravnog postupka, nejasno je kako gubi taj interes koristeći dozvoljena pravna sredstva protiv akta kojim je negativno riješen njen zahtjev.

Kod napred navedenog stanja stvari pobijano rješenje je bilo nužno ukinuti da bi u ponovnom postupku bila otklonjena ukazana povreda postupka.

Sa izloženog, a na osnovu čl.46. st.3. Zakona o upravnim sporu odlučeno je kao u izreci.

VRHOVNI SUD REPUBLIKE CRNE GORE
Podgorica, 14.09.2007. godine

Zapisničar,
Mirjana Oravić, s.r.



„It is not understandable and it is not clear and it is contrary to the facts mentioned in the case files referring to conclusion of the contested decision that after the adoption of the final administrative act in the procedure initiated at request of the party, the same party lost right to initiate litigation ...

The obtained undisputable power of a party in administrative procedure as a rule cannot be lost in administrative procedure, because if a certain party had a legal interest based on the law to lead administrative procedure, it is not clear how the party can lose that interest using the allowed legal instruments against the act that resolves the party's request negatively.

In the case of the above mentioned state of affairs, the contested decision should have been terminated in order to eliminate in the renewed procedure the proved violation of the procedure “.

3. IMPLEMENTATION OF THE LAW ON CONFLICT OF INTERESTS

"The Law allows the highest-ranking politicians, members of the government and other high-ranking officials to serve on the board of companies with predominant state or municipal capital and to simultaneously negotiate the privatisation of state property on behalf of the state. In the view of the GRECO Evaluation Team, this situation can give rise to serious conflict of interests. The GRECO Evaluation Team recommends that legislative and other measures be taken to ensure that all public officials and civil servants are prohibited from acquiring inappropriate benefits for themselves or their relatives through holding a position as member of the board of the State owned companies."

The Report of Council of Europe Group of States against corruption (GRECO) on the evaluation of anti-corruption measures and activities in Montenegro

This section sets out to expose the fact, through a series of case studies, that indeed – as many parliamentarians who voted for the law agreed – that the current Law on Conflict of Interest is seriously flawed and that the Commission, whose role is to implement the law, does not appear to do so on an impartial or objective bases.

The case studies range from issues related to incompatibility of the function of a Government member as well as judges and other public positions up to and including the Prime Minister, to inaccurate reports on incomes, property and gifts, and engagement of public officials in business. It exposes a more worrying underlying trend and that is that a group of “trusted individuals” are being given key roles in multiple functions. The reason for this approach to membership of bodies can only be speculated about though the potential for extreme conflict of interest and a “closed shop” approach to key bodies is of great concern.

3.1. Incompatibility of the function of a Government member and other public functions

Initially adopted the Law on Conflict of interests was allowing members of the Government, i.e. Prime Minister and Ministers to be members of one management board each.

USTAVNI SUD
REPUBLIKE CRNE GORE – PRIJEDLOG

15.07.2004

mans

Mreža za afirmaciju nevladinog sektora - MANS
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USTAVNI SUD REPUBLIKE CRNE GORE
PODGORICA

NVO - MANS -
380167

Podgorica, 14. jul 2004. godine

PODGORICA, 14. 07. 2004.

Predmet: Inicijativa za pokretanje postupka ocjene ustavnosti člana 15. Zakona o konfliktu interesa Republike Crne Gore podnesena od strane Mreže za afirmaciju nevladinog sektora – MANS iz Podgorice

Ovim aktom MANS pokreće inicijativu za ocjenu ustavnosti člana 15. Zakona o konfliktu interesa RCG i to stava 2 koji kaže: "izuzetno, javni funkcioner može biti član organa jednog privrednog društva u kome je država, odnosno lokalna samouprava vlasnik."

Dokaz: Zakon o konfliktu interesa, član 15, stav 2.

This paragraph of the Law is directly contrary to Article 93 of the Constitution of the Republic of Montenegro which speaks about incompatibility of functions and states: „A Government member cannot perform the function of an MP or some other public function, nor perform professionally some other activity

Consequently, the Government members, as public officials cannot perform professionally public functions and other activities, which definitely include the performance of the function of the management body member of a company owned by the state or the local government.

As soon as the Law was adopted, MANS submitted an initiative for constitutionality assessment of the Article 15 of the Law on Conflict of Interest by which the Government members were allowed to remain in one management board.

The initiative stated that this Article was directly contrary to the Constitution which states the incompatibility of function and bans the Government members to perform the any other public functions.

The initiative was submitted on July 14th 2004 and the Constitutional Court made a decision six months later, on January 26th 2005.

By a verdict of the Constitutional Court it was determined that the disputable provision is contrary to the Constitution and it was nullified, so **Government members were banned from performing other public functions, including the functions of members of management boards of public and private companies.**

Initiative to the Constitutional Court from July 14th 2004

Excerpts from the Decision of the Constitutional Court of the Republic of Montenegro from 26 January 2005 which determines that the provision of Article 15 paragraph 2 of the Law on Conflict of Interest is not in compliance with the Constitution and becomes null and void on the day when the decision is published¹

Parliament of the Republic of Montenegro, as the body adopting the disputed enactment, did not submit in the determined time limit an answer to the statements contained in the decision to initiate the proceedings.

After considering the content of the disputed provision of the Law, the Constitutional Court determined that it does not comply with the Constitution of the Republic of Montenegro.

The disputed provision of the Law, prescribes that exceptionally, a public official can be a member of the body of one company owned by the state or the local government.

* * *

From the quoted provisions of the Constitution it follows that the law in accordance with the Constitution regulates the manner in which freedoms and rights are exercised, if that is necessary for their exercising, that the Government is bound by the Constitution and the law, that everyone is obliged to adhere to the Constitution and the Law, that a Government member, a judge, a state prosecutor, as well as the President and a judge of the Constitutional Court cannot perform the function of an MP or perform professionally some other public function.

* * *

The exception prescribed by the disputed provision of the Law, that a public official can be a member of the body of one company owned by the state or the local government, must be interpreted in the context of the entirety in which these relations are regulated. Namely, it follows from the Law on Conflict of Interest that a public function implies, in the sense of this law, jobs performed by a person elected by direct or secret vote, a person elected or appointed by the Parliament of the Republic of Montenegro, a person appointed or nominated by the Government of the Republic of Montenegro and a person elected or named by the local self-government.

Consequently, the disputed provision of the Law refers to all the public officials, although the Constitution bans a second function, i.e. professional activity only to certain proponents of public function. Namely, the incompatibility of the functions prescribed by the Constitution refers to the Government members, judges, the State Prosecutor, the President and the judges of the Constitutional Court. The Constitution, in this sense, explicitly prescribes the incompatibility of the function for these public officials, while for other public officials defined by the Law, there is no such constitutional constraint.

Since the Companies Act ("Official Gazette of the Republic of Montenegro ", number 6/02) prescribes that the assembly of shareholders and the board of directors are bodies of a company, and that provision of Article 15 paragraph 1 of the law on Conflict of Interest prescribes that a public official can be a member of the assembly of shareholders, this means that the disputed provision refers to membership in the board of directors, which is the management and governing body of a company. Starting from the above, the Constitutional Court determined that the disputed provision of the Law does not comply with the Constitution of the Republic of Montenegro, because this provision violates the constitutional principle of incompatibility of function from Art. 93, 106 and 111 of the Constitution of the Republic of Montenegro.

¹ Decision of the Constitutional Court of the Republic of Montenegro no. 66/04 from 26 January 2005

Since the Law and the Constitutional Court Decision came into effect and after the initiative of MANS was submitted, all four Deputy Prime Ministers and seven Ministers submitted their resignations to the 22 functions that they in total had in various management boards of companies.

In practice, numerous problems occur in the interpretation of the notion of a public function, particularly when it comes to the participation of Government members in the advisory and executive bodies established by the Government.

According to the Law on Conflict of interests, a public functionary is a person appointed by the Government i.e. Parliament or local government. However, in practice, without a proper basis in the Law the Commission for Conflict of Interests gave different interpretations to the notion of public office or function.

Case studies show that the Commission adopted a double standard, simultaneously claiming that membership in a body is a public function but that the same function is not public if it is held by Government members, judges or prosecutors, stating that such persons only perform duties within their competences, although all the members of these bodies are appointed in the same way.

The most drastic examples of different interpretations of the Law by the Commission are related to the former Prime Minister, Milo Đukanović and they are presented in several case studies given in this Chapter. While he was the Prime Minister, Đukanović simultaneously held five other offices: Minister of Defense, President of the Privatization Council, President of the National Council for Sustainable Development, member of the European Integration Council and President of the Management Board of the Agency for Promotion of Foreign Investments.

3.1.1. Case study 3: Government members in management boards of companies

The Constitutional Court Decision² which prohibits the Government members to hold any other public function came into effect on March 7th, 2005. A month later, on April 12th MANS submitted the initiative against the members of the then Government of Montenegro who according to the official data still held the functions as members of certain management boards.

According to the Business Organization Law, the Commercial Court is in charge of keeping records of companies, including the data on the members of the boards of directors and every company is obliged to register every change. Before it is registered in the Central Register of the Commercial Court no change has legal effect, including the change in the management structure of the company.

On the same day when the above initiatives were submitted the Government PR Bureau announced that the Ministers referred to in the initiatives resigned the disputable positions in the boards of directors but that it was *„the matter of the management bodies to decide when they will accept the resignations of the Government members”*³. This attitude was also to be found later in the decisions of the Commission which expressed the opinion that *„the day of submitting one's resignation and not participating in the management body of a company is the action which eliminates the behaviour which is contrary to the Law on Conflict of interests and not the formal statement of the resignation and its registration in the Central register, because these actions and the time of making them do not depend on the functionary whose behavior is in compliance with the Law.”*

² More details about the proceedings at the Constitutional Court and excerpts from the Decision are given in the Chapter 1.5.

³ Daily Newspaper “Dan” – April 13th 2005

On June 8th, 2005 the Commission decided that none of the Ministers were violating the Law. They provided the following explanation:

„In terms of the Law on Conflict of interests, a conflict of interest occurs when a public functionary puts his private interests before the public interest, in order to gain material benefit or privilege for him or persons related to him. The initiatives do not indicate to any action or behaviour which would mean that any conflict of interest occurred. Membership of the Government members in the management bodies of certain companies is a behaviour contrary to the Law on Conflict of interests but not a conflict of interest as such in terms of the Article 4, paragraph 1, item 1 of the Law.”

All the ten Ministers that these initiatives referred to violated the Law in one aspect or another:

- Two or them resigned only after the initiative was submitted
- Seven of them resigned only after a certain period of time after the Law on Conflict of interests prohibited them from performing more than one public function (after the Decision of the Constitutional Court came into effect)
- Five of them performed functions in more than one management board even after the Law that prohibited them from doing so came into effect (before the Decision of the Constitutional Court)

Government member	Management board	Decision of the Commission	Resignation
Darko Uskoković, Minister of economy	<i>Montenegro bonus</i>	Does not violate the Law ⁴	Resigned on April 21, 2005 45 days after the Constitutional Court Decision 9 days after the initiative was submitted
Milutin Simović, Minister of Agriculture, forestry and water industry	<i>Plantaže</i>	Does not violate the Law ⁵	Resigned on April 1, 2005 23 days after the Constitutional Court Decision 11 days before the initiative was submitted
	<i>Montenegro bonus</i>		Resigned on July 5, 2005 49 days after the Constitutional Court Decision 23 days after the initiative was submitted
	<i>Mljekara Zora</i>		Resigned in early 2003 Before the Constitutional Court Decision and before the Law came into effect
Branimir Gvozdenović, Deputy Prime Minister	<i>Elektroprivreda CG</i>	Does not violate the Law ⁶	Resigned on March 31, 2005. 24 days after the Constitutional Court Decision and 12 days before the initiative was submitted
Dragan Đurović, Deputy Prime Minister and Minister of interior	<i>Budvanska rivijera</i>	Does not violate the Law ⁷	Resigned on March 30, 2005. 23 days after the Constitutional Court Decision and 13 days before the initiative was submitted

⁴ Decision No 1160/71 as of July 7, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Darko.htm>

⁵ Decision No 1160/72 as of July 6, 2005, www.konfliktinteresa.cg.yu/rjesenja/Milutin.htm

⁶ Decision No 1168/59, as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/Gvozdenovic.htm

⁷ Decision No 1160/61 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Dragan.htm>

Government member	Management board	Decision of the Commission	Resignation
Miroslav Ivanišević, Deputy Prime Minister	<i>Luka Bar</i>	Does not violate the Law ⁸ .	Resigned on March 25, 2005. 18 days after the Constitutional Court Decision and 18 days before the initiative was submitted
Jusuf Kalamperović, Deputy Prime Minister	<i>Montenegro airlines</i>	Does not violate the Law ⁹	Resigned on March 24, 2005. 17 days after the Constitutional Court Decision and 19 days before the initiative was submitted
	<i>Centrojadrán</i>		Resigned on October 13, 2004 Before the Constitutional Court Decision 135 days after the Law came into effect
	<i>Merkur & Co</i>		Resigned on October 13, 2004 135 days after the Law came into effect
Slavoljub Stijepović, Minister of labour and social welfare	<i>Centar Zeta</i>	Does not violate the Law ¹⁰	Resigned on February 14, 2005 Before the Constitutional Court Decision 225 days after the Law came into effect
	<i>Sindikalni fond za solidarnu stambenu izgradnju</i>		Resigned on September 10, 2004 Before the Constitutional Court Decision 90 days after the Law came into effect
Boro Vučinić, Minister of physical development	<i>13. jul</i>		Resigned on January 28, 2005 Before the Constitutional Court Decision 210 days after the Law came into effect
	<i>Sindikalni fond za solidarnu stambenu izgradnju</i>	Does not violate the Law ¹¹	Resigned on July 23, 2004 Before the Constitutional Court Decision 23 days after the Law came into effect
Predrag Nenezić, Minister of tourism	<i>Montenegro airlines</i>	Does not violate the Law ¹²	Resigned on December 27, 2004 Before the Constitutional Court Decision 180 days after the Law came into effect
Andrija Lompar, Minister of transportation	<i>"Izgradnja"</i>	Does not violate the Law ¹³	Resigned on July 23, 2004 Before the Constitutional Court Decision 23 days after the Law came into effect

⁸ Decision No 1160/58 as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/Miroslav.htm

⁹ Decision No 1160/60 as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/kalaperovic.htm

¹⁰ Decision No 1160/62 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Stijepovic.htm>

¹¹ Decision No 1160/65 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Vucinic.htm>

¹² Decision No 1160/36 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Nenezic.htm>

¹³ Decision No 1160/64 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/lompar.htm>

3.1.2. Case study 4: Privatization Council

The Government of Montenegro established by a Decision the Privatization Council with the task to manage, control and ensure implementation of privatization as the body which in the privatization procedure represents the interests of the state and has the executive authority. The Privatization Council reports to the Government in relation to its work and proposes privatization plans.

According to the Government Decision, President of the Privatization Council is the Prime Minister and the majority of the Council members are from the Government¹⁴, which means that they report to themselves and that they, somewhat implausibly, supervise their own work.

The Law on Conflict of Interests defines public officers as persons that are appointed or nominated by the Government and on that basis MANS submitted a number of initiatives in order to prove that the Privatization Council members are public officers and that therefore Government members may not hold such functions.

Upon these initiatives of MANS the Commission for determination of conflict of interests passed a **number of contradictory opinions and decisions:**

- On April 28, 2005, upon the request of the Vice-president of the Council, Veselin Vukotic, the Commission gave its opinion that the position of a member of the Privatization Council **is not a public function.**
- As a response to the initiative of MANS, on December 12, 2005 the Commission stated again that **it is not a public function.**
- However, on March 20, 2006, after a new initiative of MANS, the Commission passed a contradictory decision to its two earlier rulings stating that the position of membership of the Privatization Council **is a public function.**
- In the new Decision made on April 27, 2006 the Commission stated that **for the Government members the position in the Privatization Council is not a public function:**

„It is logical and necessary that the Privatization Council, just like other Government working bodies comprises a number of Government members and therefore their participation in the governmental operational and advisory working bodies is not a behavior contrary to the Article 93 of the Constitution, or a conflict of interest. This means it is not a violation of the Law on Conflict of interests, because when they are appointed members of the Privatization Council, Government members do not take a new public function. They only perform their duties within the competencies of the Government and within the Government organization. This kind of interpretation is not contrary to the decision passed earlier by the Commission stating that the persons appointed to the Privatization Council are to be considered public functionaries. The attitude from that decision and this attitude are complementary. The opinion of the Commission referred at that time to persons that are appointed members of the Privatization Council and are not Government members. Being appointed to the position where they perform duties within the Government bodies, i.e. within the Government competencies, and being appointed by the Government, these persons are considered to be public functionaries in terms of the Article 2, paragraph 2 of the Law on Conflict of interests, primarily due to the status they achieved by being appointed.“

¹⁴ In the period when this initiative was submitted, the president of the Council was the Prime Minister Milo Đukanović and the members were the Minister of economy, Predrag Bošković, Minister of tourism Predrag Nenezic and the Minister of finance, Igor Lukšić.

The Commission claims that for the Vice-president of the Council, Veselin Vukotic, the position of a Council member is a public function, while for the Prime Minister and Ministers it is not, although they are all appointed in the same way – by a Government decision.

On the basis of the Article in the Constitution of Montenegro which prohibits Government members from holding other public offices, MANS submitted another initiative to the Constitutional Court on June 30th, 2007. This time it was the initiative to examine constitutionality of the Decision on establishing the Privatization Council in which members of the Government are appointed members of the Council.

On December 1st, 2005 Constitutional Court rejected the above initiative claiming that it did not have the jurisdiction to examine constitutionality of the concerned Government Decision since the Decision is not an enactment defining rights and obligations for an indefinite number of people which means it is not a general legal norm, but an individual legal enactment.

Examining constitutionality of individual legal enactments is not within the jurisdiction of any institution and therefore it means that the Government can freely pass and enforce any individual legal enactment which is in collision with the Constitution¹⁵.

Ustavom Republike Crne Gore propisano je da zakon mora biti saglasan sa Ustavom, a drugi propis i opšti akt sa Ustavom i zakonom (član 107) i da Ustavni sud odlučuje o saglasnosti drugih propisa i opštih akata sa Ustavom i zakonom (član 113 stav 1)

The quoted provision of the Article 113, paragraph 1, item 2 of the Constitution of the Republic of Montenegro leads to the conclusion that it is the Constitutional Court that has the jurisdiction to decide on whether a regulation or a general enactment is in compliance with the Constitution. Insight into the disputed Decision made the Constitutional Court conclude and decide that it is not competent to give any judgment on constitutionality and legality of that Decision. The disputed enactment, namely, although it was passed in the form of a decision, does not contain provisions of general character, nor does it regulate any relations in general manner. These are individual provisions for appointment of the ten members of the Privatization Council and for replacement of the two members of the Council by new members whose names are given. The contents of the disputed provisions also show that they do not determine rights and obligations for an indefinite number of persons, which means that in their contents, scope of their effect and legal nature these provisions are not general legal provisions constitutionality and legality of which the Constitutional Court could examine in a constitutional-court proceedings according to the Article 113, paragraph 1 of the Constitution of the Republic of Montenegro. Due to the above reasons the Constitutional Court is of the opinion that it does not have the jurisdiction to examine constitutionality and legality of the disputed Decision.

ZAMJENJUJE PREDSEDNIKA
USTAVNOG SUDA REPUBLIKE CRNE GORE
SUDIJA,
Dražen Smolović
[Signature]

¹⁵ In case that the individual legal enactment violates rights of citizens, they can submit a constitutional complaint for protection of their rights guaranteed by the Constitution. However, neither the old Constitution, nor the new one provide for the examination of constitutionality of individual enactments that violate other provisions of the Constitution.

3.1.3. Case study 5: Agency for Promotion of Foreign Investments

In the Decision on the appointment of the Management Board of the Agency of Montenegro for Promotion of Foreign Investments the Government appointed the following Government members as members of the Board: Milo Đukanović, Prime Minister and the Ministers Gordana Đurović, Predrag Nenezić and Boro Vučinić.

In relation to this Decision MANS submitted the initiative for determination of conflict of interests in these cases. However, the Commission decided that the Government members do not violate the Law on Conflict of interests because the concerned Agency is a kind of a government body, and therefore the function of a member in the management board of the Agency is not treated as a public function if it is held by a Government member.

Starting from the provisions of the Law on Public Administration („Official Gazette of the Republic of Montenegro“ No 38/03) and the Ordinance on the organization and manner of operation of public administration („Official Gazette of the Republic of Montenegro“ No 54/04, 78/04 and 6/05) that refer to the activities, establishment and operation of public administration, the Commission is of the opinion that the activities and affairs of the Agency fall within the competences of the Government and that the Agency is a kind of a working body of the Government.

Having in mind the status and the activities the Agency does, the Commission is of the opinion that a position of a member of the Government in the board of the Agency is not the second public function and it is not a violation of the Article 93 of the Constitution of the Republic of Montenegro and the Law on Conflict of interests if a Government member is a member of the management board of the Agency. The issue of constitutionality of the Decision on establishment of the Agency in terms of the Article 93 of the Constitution is not within the jurisdiction of the Commission and therefore the Commission did not address it.

President of the Management Board of the Agency does not receive any fee for working in the Management Board and therefore he could not have reported any income on that basis.

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

Pouka o pravnom lijeku: Protiv ove odluke nezadovoljna stranka može, u roku od osam dana od dana...

PREDSJEDNIK
Slobodan Leković

On June 8th, 2006 MANS submitted an initiative to the Constitutional Court and on March 11th, 2007 the **Constitutional Court** passed the decision determining that the Decision on establishing the Agency gives the status of a public institution to the Agency and not the status of a working body of the Government. Therefore the Constitutional Court decided that **the provision appointing Government members to the positions of the members of the Management board of the Agency was not in compliance with the Constitution and the law.**

In spite of the Decision of the Constitutional Court, (before publishing of this publication) the Government has not enforced the Constitutional Court Decision and has not appointed other persons to the positions of the members of the Management Board of the Agency¹⁶.

¹⁶ http://www.crps.cg.yu/home.php?akcija=registar&akcija2=reg_det&ID=100000072

3.1.4. Case Study 6: National Commission for fight against Corruption & Organized Crime

ОДЛУКУ

О ОБРАЗОВАЊУ НАЦИОНАЛНЕ КОМИСИЈЕ ЗА ИМПЛЕМЕНТАЦИЈУ АКЦИОНОГ ПЛАНА ЗА СПРОВОЂЕЊЕ ПРОГРАМА БОРБЕ ПРОТИВ КОРУПЦИЈЕ И ОРГАНИЗОВАНОГ КРИМИНАЛА

I Образује се Национална комисија за имплементацију Акционог плана за спровођење Програма борбе против корупције и организованог криминала (у даљем тексту: Национална комисија).

II У Националну комисију именују се:

председник
проф. др ГОРДАНА ЂУРОВИЋ, потпредседник Владе Републике Црне Горе

замјеник председника
ЈУСУФ КАЛАМПЕРОВИЋ, министар унутрашњих послова и јавне управе

чланови:
др ИГОР ЛУКШИЋ, министар финансија
МИРАШ РАДОВИЋ, министар правде
ДРАГИША ПЕШИЋ, председник Одбора за економију, финансије и буџет у Скупштини Републике Црне Горе

ЦАВИД ШАБОВИЋ, председник Одбора за политички систем, правосудје и управу у Скупштини Републике Црне Горе

РАТКО ВУКОТИЋ, председник Врховног суда Републике Црне Горе

ВЕСНА МЕДЕНИЦА, Врховни државни тужилац

ВЕСЕЛИН ВЕЉОВИЋ, директор Управе полиције

ВЕСНА РАТКОВИЋ, директор Управе за антикорупцијску иницијативу

ВАЊА ЂАЛОВИЋ, извршни директор Мреже за афирмацију невладиног сектора

Members of the National Commission for the implementation of the Action Plan for the enforcement of the Programme for Combating Corruption and Organized Crime were appointed in a Government Decision.

National Commission is monitoring the implementation of the Action plan, which means that they are supervising the implementation of measures implemented by the institutions the managers of which are members of the Commission. Thus they are supervising and evaluating their own work.

The Commission for Determination of Conflict of Interests first adopted the Opinion that the members of the National Commission are public functionaries and then decided that for Government members, judges and prosecutors the function of a member of the National Commission is not a public function.

As a member of the National Commission for the implementation of the Action plan for the enforcement of the Programme for combating corruption and organized crime, Vanja Čalović applied to the Commission for Determination of Conflict of interests on March 20, 2007 with the request asking them to express their opinion on whether as a member of the National Commission for the implementation of the Action plan for the enforcement of the Programme for Combating Corruption and Organized Crime she is a public functionary or not.

It is a public function: On March 30th, 2007 the Commission adopted the Opinion that a person appointed a member of the National Commission is a public functionary „particularly due to the competences of the National Commission and the fact that the Government appointed the National Commission members, the Commission is of the opinion that Vanja Čalović, as the National Commission member is a public functionary in terms of the Article 2, paragraph 2 of the Law, because she was appointed to the position of the member of the National Commission by the Government.

Subsequently MANS submitted the initiative for initiating a procedure in the Commission for Determination of Conflict of interests against Gordana Đurović, Deputy Prime Minister, Igor Lukšić, Minister of finance, Jusuf Kalamperović, Minister of interior and public administration, Miraš Radović, Minister of justice, Vesna Medenica, Supreme State Prosecutor and Ratko Vukotić, President of the Supreme Court, because apart from these functions they also hold the functions of the President and members of the National Commission for the Implementation of the Action Plan for the Enforcement of the Programme for Combating Corruption and Organized Crime. The functionaries were appointed to these functions in the National Commission by the Government.

It is not a public function: On April 27th, 2007 the Commission made the Decision stating that the Ministers did not violate the Law because the National Commission is a working body of the Government and its task is to manage, organize and synchronize activities of the public administration bodies, state bodies and other competent institutions in the implementation of the Programme for combating Corruption and Organized Crime and therefore the position of a member in the National Commission is not his second public function. In the Decisions related to the Supreme State Prosecutor Vesna Medenica and the President of the Supreme Court Ratko Vukotić the Commission was of the opinion that their membership in the National Commission was not the second public function either, but that it was the obligation of the Supreme State Prosecutor and President of the Supreme Court to do the activities within their competences in fighting corruption & organized crime.

On May 10th, 2007 MANS submitted the request for reexamination of the first instance Decision emphasizing that the Government members, the Supreme State Prosecutor and the President of the Supreme Court were appointed to the positions of members in the National Commission in a Government Decision and that they thus obtained the status of public functionaries. In the request it was stated that although appointed in the same way, other members of the National Commission were proclaimed public functionaries, and that therefore the subject Decision represented a violation of the constitutional right to equal treatment in the eyes of law.

It is not a public function: On May 25th the Commission rejected the request and confirmed its earlier decision.

On May 11th Vanja Čalović asked the Commission to reexamine their Decision indicating that her constitutional right of equal treatment of citizens in the eyes of law was violated when as a member of the National Commission she was proclaimed to be a public functionary, while other members of the same Commission did not obtain the same status.

It is a public function: On May 25th the Commission rejected the request for reexamination and confirmed its earlier opinion with the following explanation:

„The Commission is of the opinion that the request for reexamination of the concerned Decision is not aimed at changing the Decision, in terms that the subject person is not a public functionary. The person submitting the request insists on saying that due to the manner of appointment in the National Commission the members of the Government are violating the Law on Conflict of interests because they have other public functions. She relates this to her status of a public functionary which she obtained on the basis of the manner of appointment. The Commission for determination of conflict of interests, upon the Initiative and request of the NGO MANS, in both first instance and second instance procedure, gave its opinion that for the Government members this is not the second and prohibited public function, but a duty that they have within Government institutions and bodies.“

On April 2nd, 2007 Vanja Čalović applied to the Commission again asking for the opinion about whether she as a member of the National Commission had to resign from her duty of the Executive Director of the NGO MANS:

„According to the Article 16 I should resign from the position of the Executive Director of MANS because as a public functionary I can be only a member of an NGO. On the other side, I was appointed to the position of a member of the National Commission in my capacity of the Executive Director of MANS. If I resign from the function of the Executive Director of MANS I automatically cease to be a member of the National Commission, because I was appointed to that function as the Executive Director, i.e. I cease to be a public functionary. On the other side, if I am not a public functionary then I can be the Executive Director of MANS, but thus I meet the condition again to be appointed member to the National Commission as the Executive Director of MANS which brings us back to the beginning.“

It is not a public function and it is: On April 27th the Commission expressed the opinion that membership of Vanja Čalović as a public functionary in the National Commission was not incompatible with her duty of the Executive Director of the NGO MANS and that it was not a behaviour contrary to the Law. Željka Vuksanović, member of the Commission for conflict of interests expressed a different opinion:

"The opinion of the Commission that membership in the National Commission for Vanja Čalović is a public function and that it is not for the other members is unsustainable and therefore it is necessary that the Commission reexamines its opinion."

3.2. Incompatibility of the function of a judge and other public functions

According to the Constitution of Montenegro judges may not perform any other public function nor can they professionally perform any other activity.

The definition of a public functionary, and thus of a public function as well, is given only in the Law on Conflict of interests and according to that definition a public functionary is the person elected by direct and secret vote, person elected or appointed by the Parliament, person appointed or nominated by the Government and a person elected or appointed by local government.

Case studies show that **in spite of the constitutionally defined incompatibility of the function of a judge and other public functions, executive and legislative authorities appoint judges to other public functions.**

3.2.1. Case study 7: President of the Commercial Court

At its session held on August 1st, 2007 **the Government** of Montenegro passed the Decision on establishing the Commission for concession and BOT arrangements **appointing** Dragan Rakočević, President of the Commercial Court to be the president of this Commission "which represents the Government of the Republic of Montenegro"¹⁷.

MANS submitted an initiative to the Commission for conflict of interests indicating that Dragan Rakočević, as a judge, cannot be appointed to any other public function by the executive authorities and that in his report of incomes and property he did not report his membership in the Commission for concessions and BOT arrangements, neither did he report the incomes he earned on that basis.

The Commission for conflict of interests made the decision that Dragan Rakočević **did violate the Law** on conflict of interests by not stating in the report of his incomes and property for 2005 the exact data and therefore the income he earned on the basis of being a member in the Commission for concessions & BOT arrangements that he did not report was to be considered illegally earned income.

„The Commission decided that Rakočević **did not violate the law** by being a member of the Commission for concessions and BOT arrangements because the Law on participation of private sector in performing public functions (Article 129) defines that one of the four permanent members of the body – the chairman and representative of the Government is to be a judge or a former judge. The provision of the Constitution that "a judge cannot hold an MP or other public function" can be applied only after the Constitutional Court decides on whether the provision of the Law on participation of the private sector in performing public functions is unconstitutional." As early as on April 5th, 2007 MANS submitted the initiative to the Constitutional Court to examine the constitutionality of the disputable Article of the Law and the Decision on appointment of the members of the Commission but the decision upon that initiative has not yet been passed. Therefore the President of the Commercial Court still freely performs the second public function in which he represents the executive branch of power.

On the same day, April 5th, the Government passed new Decision, **appointing again** President of the Commercial Court to position of the President of Commission for concessions & BOT arrangements.

¹⁷ According to the Law on participation of private sector in performing public services, authorities of the Commission are: to issue licenses for concessions, to approve privileges for BOT agreements, to determine the allowed increases, reductions or no changes in the tariffs, to define and control standards of the quality of public services provided, improving operational efficiency of investments of private investors, supervising performance of private companies and compliance with the agreements; ensuring clients satisfaction and receiving complaints, solving disputes with consumers in arbitration and providing for adequate responses in relation to the needs of end users, imposing sanctions on private investors if they do not meet the required quality standards, ensuring that the funds can be serviced and organizing and supervising public discussions.

3.2.2. Case Study 8: President of the Administrative Court

The Parliament appointed the President of the Administrative Court, Branislav Radulović to the position of the President of the Republic Election Commission (RIK).

In the first decision of the Parliament passed on September 11, 2002 the judge Radulović was elected for the President of the Commission as a representative of the ruling party, DPS.

After the Law on election of councilors and MPs was changed, members of the Republic Election Commission formally do not represent political parties. The Parliament passed a new decision in December 2003 appointing Radulović again to the position of the President of the Commission and confirming the office for the majority of other members of the Commission.

На основу чл. 15 и 16 Закона о измјенама и допунама Закона о избору одборника и посланика ("Службени лист РЦГ", број 46/2002), Скупштина Републике Црне Горе, на сједници петог ванредног засиједања у 2002. године, дана 11. септембра 2002. године, донијела је

О Д Л У К У О ИМЕНОВАЊУ РЕПУБЛИЧКЕ ИЗБОРНЕ КОМИСИЈЕ

У стални састав Републичке изборне комисије именују се:

- а) За предсједника **БРАНИСЛАВ РАДУЛОВИЋ**, дипл. правник (ДПС),
-БРАНКА ЛАКОЧЕВИЋ, дипл.правник, за замјеника (ДПС).
- б) За секретара **НЕВЕН ГОШОВИЋ**, дипл. правник (СНП).
- в) За чланове:
 1. Владимир Вујовић, дипл. правник (СНП),
-Миомир Вулић, дипл.правник, за замјеника (СНП).
 2. Радмила Штурановић, дипл. правник (ДПС),
-Слободан Драговић, дипл. правник, за замјеника (ДПС).
 3. Никола Мелојевић, дипл. правник (СНС),
-Радош Зечевић, дипл.правник, за замјеника (СНС).
 4. проф.др Веселин Павићевић (СДП),
-Ћуџица Ивановић, дипл.правник, за замјеника (СДП).
 5. Владимир Бошковић, дипл.правник (ЈСПГ),
-Мирјана Кнежевић, дипл.правник, за замјеника (ЈСПГ).
 6. Родољуб Пејовић, дипл.правник, (НС),
-Бранислав Ћупић, дипл.правник, за замјеника (НС).
 7. Мехмет Аљоја, дипл.правник (ДУА),
-Бећир Ђокај, дипл.правник, за замјеника (ДУА).
 8. Ибрахим Перезај, дипл.правник (ДС у ЦГ),
-Мухарем Авдију, дипл.правник, за замјеника (ДС у ЦГ).

Број 02-2916/2

Подгорица, 11. септембра 2002. године

Скупштина Републике Црне Горе

Предсједник,

Весна Перовић, с.р.

Decision of the Parliament from 2002

На основу чл. 29 и 30 Закона о избору одборника и посланика ("Службени лист РЦГ", бр. 4/98, 17/98, 14/00, 9/01, 41/02 и 46/02), Скупштина Републике Црне Горе, на другој сједници другог редовног засиједања у 2003. години, дана 18. децембра 2003. године, донијела је

О Д Л У К У О ИМЕНОВАЊУ РЕПУБЛИЧКЕ ИЗБОРНЕ КОМИСИЈЕ

У стални састав Републичке изборне комисије именују се:

1. **БРАНИСЛАВ РАДУЛОВИЋ**, предсједник Комисије, **БРАНКА ЛАКОЧЕВИЋ**, замјеник предсједника
2. **СЛОВОДАН ДРАГОВИЋ**, секретар Комисије.
3. За чланове и замјенике:
 - 1) **РАДМИЛА ШТУРАНОВИЋ**, члан,
ЉИЉАНА РАДОЊИЋ замјеник члана,
 - 2) проф. др. **ВЕСЕЛИН ПАВИЋЕВИЋ**, члан,
РУЖИЦА ИВАНОВИЋ, замјеник члана,
 - 3) **БОРБИЈЕ ВУКЧЕВИЋ**, члан,
МИРЈАНА БАРОВИЋ, замјеник члана,
 - 4) **ДРАГИЊА ПЕРОЧ**, члан,
ХАСРЕФ РАДОНЧИЋ, замјеник члана,
 - 5) **ТАРИК ГАЦОВИЋ**, члан,
ОМЕР МАНДУКИЋ, замјеник члана,
 - 6) **МЕХМЕТ АЉОЈА**, члан,
БЕЋИР ЂОКАЈ, замјеник члана,
 - 7) **ИБРАХИМ ПЕРЕЗАЈ**, члан,
МУХАРЕМ АВДИЈУ, замјеник члана.

Број 02 -2741/2

Подгорица, 18. децембра 2003. године

Скупштина Републике Црне Горе

Предсједник,

Ранко Кривокапић, с.р.

Decision of the Parliament from 2003

Upon an initiative of MANS the Commission passed the decision on August 15 stating the following: „considering the status and activities of the Republic Election Commission we are of the opinion that the membership of the President of the Administrative Court of the Republic of Montenegro in this Commission is not contrary to the Law on Conflict of interests”.

According to the statements of the Commission for conflict of interests „Republic Election Commission is an expert body that conducts the procedure of election of councilors and MPs, and therefore, considering the nature of their task as well as the fact that the function in this Commission is not a professional one the Commission for conflict of interests is of the opinion that being a member in the Republic Election Commission is not incompatible with the function of a judge. On the basis of the provisions of the Law on election of councilors and MPs it can be said that the members of election commissions, including the Republic Election Commission, due to the nature of the activities they perform, are not functionaries and they do not perform these activities professionally. These are the persons that by their expertise are to ensure legality of the elections.”

On August 24th, 2006 MANS submitted the request for reexamining the decision of the Commission emphasizing the following:

"In the positive legislation it is only the Law on Conflict of interests that defines the notion of the public function and this notion is defined solely on the basis of the manner of appointment to the function and the Law does not give any basis for differentiating professional from unprofessional performing of the function, i.e. non-expert performing of the function.

Thus, the Article 2, paragraph 2 provides for only one criterion for establishing the status of a public functionary and it is the manner of being appointed to the function and not the nature of the authority or the manner in which the public function is performed.

Explanation of the Commission stating that Branislav Radulović as the President of the Republic Election Commission does not have a public function because his function is the function of an expert and it is not done professionally is contrary to the Law on Conflict of interests. If we accept this interpretation of the Commission it would mean that MPs and councilors who do not perform their functions professionally but are employed somewhere else are not public functionaries while judges could hold the functions of a prosecutor or a Minister of justice where, also certain level of expertise is required.

The Commission is obliged to ensure implementation of the Law on Conflict of interests the scope of which is defined in the Article 2 of the Law which also gives the definition of the public functionary notion. Therefore, according to the Law, the Commission is not authorized to interpret the nature of authorities of job descriptions in certain institutions or bodies in its decisions. It is obliged to determine if a person is a public functionary in terms of the manner of election or appointment.

Since in both of the above cases the fact that a person is appointed by the Parliament is defined as the manner of obtaining a public function and since this is the only criteria provided for in the Law for determining whether something is a public function or not, the Decision of the Commission stating that by being appointed by the Parliament means obtaining a public function in one case, while it does not mean obtaining a public function in other cases is therefore contrary to the Law.

According to the above it is undisputable that Branislav Radulović, President of the Administrative Court violates the Constitution and the Law on Conflict of interests because he has the public function of the President of the Republic Election Commission regardless of whether he holds that function as a profession or not, since the function of the President of the Republic Election Commission is unambiguously a public function due to the manner of appointment to the function."

The Commission rejected the request to reexamine and they confirmed their first instance Decision. MANS submitted an action against the Decision of the Commission to the Administrative Court, which rejected the action and made the judgment that MANS is not entitled to start the procedure, and that such a right can belong only to the public functionary the Decision of the Commission refers to.

Supreme Court overturned the judgment of the Administrative Court and stated that MANS is entitled to a second instance procedure.¹⁸ The case is pending.

¹⁸ More details can be found in the Chapter 3.6 Case Law

3.3. Reports on income and property

According to the Law on Conflict of interests it is the public functionary that is responsible for the accuracy of their data in the report¹⁹, and the property acquired by the functionary or a member of his household during the term of office of the functionary which is not reported to the Commission or for which there is no legal basis is considered illegally acquired income or property and the Commission has the duty to inform the Public Prosecutor thereof²⁰.

Each public functionary is obliged to inform the Commission of any change in his property in the amount exceeding 2,000 € and he is obliged to do so within 15 days from the occurrence of the change. The public functionary with the ownership rights in a company is obliged to transfer the right of management to another person or to a special body within 15 days from the day of taking a public function²¹.

Case studies show that the Commission for conflict of interests applies the Law in different ways depending on the public functionary their decision refers to.

3.3.1. Case study 9: He is not proceeding according to the Law, but he is not violating the Law

On August 9th, 2007 MANS submitted the initiative for determining conflict of interests for the MP Milo Đukanović who did not report in his disclosure of property and incomes that his son was the owner of business premises of the surface of 412 m².

The fact that Milo Đukanović's son became the owner of the above business premises and the fact that this change in the property was not reported to the Commission were confirmed in the Commission Decision:

Date of acquiring ownership over the property	May 24, 2007
Date of registration of the ownership in his son's name	June 1, 2007
Deadline for reporting the change in the property	June 16, 2007
Date of MANS initiative	August 9, 2007
Date of reporting the change in the property	August 9, 2007

Milo Đukanović reported the changes in the property on the same day on which the MANS initiative was submitted.

In the response to MANS initiative, Đukanović highlighted that he *„had overlooked the fact that, apart from the annual Report on incomes and property he is required to submit the Report on changes in the property and that is why he failed to inform the Commission of the change in the provided term."*

In its Decision the Commission stated that the subject business premises are registered to the name of Blažo Đukanović and that *"Milo Đukanović reported to the Commission on August 9th, 2007 the change in property which occurred on June 1st, 2007, which means he did so within 15 days – conclusion is that he did comply with the Law, however not within the term required in the Law."*

¹⁹ Article 9, paragraph 2 of the Law on Conflict of Interests

²⁰ Article 11 of the Law on Conflict of Interests

²¹ Law on Conflict of Interests, Article 8, paragraph 3 and Article 15, paragraph 3

In the end the Commission passed the decision that Milo Đukanović

- Did not violate the Law in the way stated in the MANS initiative (failed to report property) but
- He did not comply with the Article 8, paragraph 3 of the Law (he violated the term provided for reporting the change)

UTVRDJUJE SE:

1) da Milo Đukanović, kao javni funkcioner, nije prekršio Zakon o konfliktu interesa na način naveden u Inicijativi MANS-a da u Izvještaju o prihodima i imovini za 2006. godinu nije dao tačne podatke;

2) da Milo Đukanović, kao javni funkcioner, nije postupio u smislu člana 8 stav 3 Zakona o konfliktu interesa da o promjeni u imovini za člana porodice obavijesti Komisiju u roku od 15 dana od dana nastanka promjene.

Obrazloženje

NVO Mirča za afirmaciju nevladinog sektora – MANS podnijela je 10. avgusta 2007. godine Komisiji za

Blažo Đukanović, the son of Milo Đukanović got the business premises of 412 m² in Podgorica in "Vektra" building, as a present from his uncle Aco Đukanović which is registered in the Deed of gift Certificate No 17612/07 as of May 24th, 2007 and it was registered in his name on June 1st, 2007.

On August 9th, 2007 Milo Đukanović reported to the Commission that there was a change in the property of a member of his family – son Blažo i.e. that he became the owner of the business premises of the surface of 412 m².

In his response to the Initiative of the NGO MANS Milo Đukanović stated that his son Blažo got as a present from his uncle the business premises of the surface of 412 m² which is stated in the Deed of gift as of May 24th, 2007 but that he had overlooked that, apart from the annual Report on incomes and property he is required to submit the Report on changes in property and that is why he failed to inform the Commission of the change in the provided term.

The business premises of the surface of 412 m² was neither in the possession nor in the ownership of Blažo Đukanović at the time when his father Milo Đukanović submitted his Report on incomes and property for the year 2006 and therefore he could not have reported that property.

Article 8, paragraph 3 of the Law on Conflict of Interests stipulates that a public functionary is obliged to inform the Commission of every change exceeding the amount of 2,000 € within 15 days from the day of such a change.

The change in the property, occurred on June 1st, 2007 was reported to the Commission by Milo Đukanović on August 9th, 2007, i.e. 15 days after the change in the property occurred. In such a way he complied with the Law however not within the term required by the Law.

On the basis of the above we made our decision.

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

PREDSJEDNIK
Slobodan Lakoš

3.3.2. Case study 10: Everyone is equal but some are more equal than others

On August 29th MANS submitted to the Commission the initiative for establishing that Milo Djukanovic, member of the Montenegrin Parliament violated the Law on Conflict of Interests performing the office of executive director, founder and authorized representative of Capital Invest DOO as well as not transferring management rights on the basis of his ownership rights in this company to another person.

Registration date	February 23. 2007.
Deadline for transfer of ownership rights	March 10. 2007.
Date of submission of initiative by MANS	August 28. 2007.
Date of transfer of ownership rights	September 19. 2007.

The Commission passed again the Decision that Milo Djukanovic

- Did not violate the Law in the way specified in MANS initiative (omitted to transfer ownership rights to another person)
- Did not act according Article 8 Paragraph 3 of the Law (missed the deadline for transfer of ownership rights).

Commission found in its Decision that Milo Djukanovic registered the transfer of management rights on September 19 2007 and doing so "acted according to the Article 15 Paragraph 3 of the Law on Conflict of Interest but not meeting the deadline stipulated by the Article of the Law".

In the separate opinion the member of the Commission, Zeljka Vuksanovic, found that "the position of Commission articulated in Paragraph 1 of the Decision that the public official did not violate the Law on Conflict of Interest is untenable" and that by passing such decision the **"Commission differed from adopted position in other cases that previously decided upon"**.

In the case of a representative in the local parliament of Danilovgrad Veselin Mitrovic, the Commission decided that he violated the law because he did not transfer management rights on other persons during 15 days of deadline. Mitrovic requested from the Commission to review its decision because he was not well informed on the duty to transfer management rights to another persons, and in addition he also had health problems and that he fulfilled the duty after the first instance decision of the Commission.

The Commission found out that Veselin Mitrovic afterwards transferred management rights but reconfirmed its first instance decision that Mitrovic as a public official violated the Law on Conflict of Interests by the fact that taking the public office did not transfer management rights in company to another unrelated person in the stipulated deadline.

Three months later the Commission found that Milo Djukanovic did not violate the Law but transferred management rights beyond the deadline established by the Law.

In his answer Djukanovic says that he as executive director of DOO "Capital invest" did not receive salary and Commission found that there was no ground to inform State Prosecutor on illegal income.

The Company Law stipulates that executive director has to receive compensation for his work. In addition Milo Djukanovic is founder and sole owner of the company that during the period he was executive director made business deal that produced 8 million euros for the company.

MANS submitted appeal against the Decision of the Commission.

The case is still in the procedure.

Interview of Milo Đukanović in the show "On Sunday at 2PM" of Croatian National TV broadcasted on March 13. 2005.

Question: What are your possessions, are you a rich man?

Đukanović's answer: I am going to tell you following: certainly I am not a poor man and I am a man who has ever been poor. That means as I said at the beginning of my career I was atypical for that time when someone's reference was the origin from a poor, peasant family. I did not come from such family, because my parents, both of them, were quite rich persons from quite rich families, and what we did as a family when we were growing up was not to dissipate money on all kind of things, but to save it and increase it. I can say that I am not poor, although...

Answer: What that means, how many, let's say, fixed properties or movables do you have?

Djukanović's answer: Fixed properties, fixed properties I do not have. Therefore, I have what is...

Question: Where are you living?

Djukanović's answer: Well, I have, I have the apartment in which I live and that's all, what I have as a fixed property. However, as I said, my family is a family for sure above Montenegrin average. Fortunately my father and mother are still alive. So, what I have from possessions are their possessions and that is going to be like that until the end of their life, and certainly I am not today, not in the future a poor man. I will be even less poor when I go to the business. I am fully confident, because I will know how to valorize my experience from political life for the period that is going to be my future.

Question: What are your savings?

Djukanović's answer: I do not have savings neither in domestic nor in foreign banks.

Question: What about your relatives?

Djukanović's answer: My relatives do not have it.... Those relatives I know and who I can have conversation with on that topic. Well, we are not people that would peek in wallets of others but if you think that my assets can be found on the account of my wife, my son, my brother or my sister, you are wrong, because there is neither my nor their possession....

Monte Nova, Podgorica company owned by Aco Djukanovic, brother of Milo Djukanovic purchased on November 1 2006 30 percent of shares of Niksicka Banka (The Bank of Niksic) for app. 2.3 million euros. Although one third of ownership of that last state remaining bank was offered on public auction, only Djukanovic's company submitted a bid. The day after Aco Djukanovic became the largest shareowner of the Bank of Niksic the assembly of shareholders passed the decision to increase the capital of the bank for 90 percent i.e. to 14.4 million euros. According to the analysis of business accounts for 2006, carried out by the Central Bank of Montenegro 'Monte Nova' is the most profitable Montenegrin domestically owned company that in 2006 scored the profit of 8.1 million euros.²².

The company DOO „Capital Invest" was registered on February 23 2007, and its sole owner, executive director and legal representative was Milo Djukanovic. "Capital invest DOO" acquired 7 percent of share of the Bank of Niksic in August²³. The shares were bought for 1.5 million euros but by the end of 2007 their stock market value was more than 8 million euros. During the same capitalization one of the owners became the sister of Djukanovic brothers, barrister Ana Kolarevic who purchased 1% of shares for 240.000 euros. Agency for Prevention of Money Laundering claimed that the company of Milo Djukanovic took the loan "from a London bank" and that the transaction was regular²⁴.

²² Daily "Vijesti", 02 Nov 2006, Daily "Vijesti", 03 Nov2006, Daily "Vijesti", 15 Nov2007

²³ The Bank of Niksic after Aco Djukanovic purchased the shares changed its name to "Prva banka Crne Gore"

²⁴ Daily "Vijesti", 15 Aug 2007 Daily "Vijesti", 18 Aug 2007

Question: *How is it possible that you did not make any savings in the last 15 years?*

Djukanovic's answer: *Why do you think it was necessary?*

Question: *Usually people save, you did not?*

Djukanovic's answer: *Everything I have been acquiring, during all my life I have also been spending.*

Question: *At the same time you say that you are not poor. So, you have one apartment; nothing on the account; don't you find it a little bit paradoxical?*

Djukanovic's answer: *I can assure you, when I start the business, the last thing I am going to be interested in is to pile up real estates and pile up the money. The quality of the life is what I am interested in. I have quality life, I have quality flat, I have living standard that can satisfy my needs. Tomorrow, when I start the business and when I start earning what I really think my knowledge is worth on the market which is not the case today I will do very little investments in real estates, and I will do my best to visit some world destinations that I have not visited yet, to live in a quality manner with my family. I do not at all belong to the people who are in politics in order to greedily make up what they missed in their youth. I did not miss anything.*

Question: *Only the flat, nothing more?*

Djukanovic's answer: *Well, I did not miss the flat either. I had very comfortable life in the flat with my parents and when I made my own family, logically I got the flat.*

Question: *No, I refer here to your previous statement when you said I am not poor and I have only a flat. That is even for the countries that are less developed than Montenegro relatively poor status...*

Djukanovic's answer: *It is the question what people consider as rich... Let's say it sounds a little bit illogical that someone who comes from Podgorica, who holds such office, does not have holiday house at the seaside. No. I do not have intention at all to have it because my life philosophy is different. Everyday in less than thirty minutes I can be at the seaside and I do not want to make commitment that I spend every summer holiday in Budva, because I might have a wish to spend it in Marbella.*

According to the Income and Assets Report Milo Djukanovic in 2005 and 2006 had monthly income of 456 euros, the salary of his wife was 500 euros; in 2007 his monthly salary was 765 euros and the income of his wife 712 euros.

Year	2005	2006	2007			
The type of the report	Annual Report	Annual report	Annual report	On the Day of change when amount is larger than 2000 E	On the Day of change when amount is larger than 2000 euros	On the Day of change when amount is larger than 2000 euros
Functionary	Milo Đukanović					
Function	Prime Minister	PRIME MINISTER	MEMBER OF THE PARLIAMENT	-	-	-
Fixed property	FLAT IN PODGORICA -GORICA C (114 M2 + ATTIC) – GIVEN BY MNE GOVERNMENT (BOUGHT UP) – SUBSEQUENT RECONSTRUCTION INTEGRATED IT WITH NEIGHBOURING FLAT OF 73 M2 WHOSE OWNER IS ACO DJUKANOVIC. THE OWNER OF THE FLAT ARE MILO AND ACO DJUKANOVIC			BY CONTRACT ON GIFT ACO ĐUKANOVIĆ TRANSFERED HIS OWNERSHIP SHARE TO MILO ĐUKANOVIĆ	-	-
Fixed Property	-	-	-	-	-	-
Company ownership	-	-	"UNIVERZITATS" (25 % - FOUNDING SHARE) PODGORICA DOO" CAPITAL INVEST" – IN FORMATION	-	-	DOO PRIMARY INVEST (OSNIVAČ: MILO ĐUKANOVIĆ)
Monthly property	456 EUROS	456 EUROS	765 EUROS	-	-	-
Other income	-	-	-	-	-	-
Spouse	Lidija Đukanović					
Fixed Property	-	-	-	-	-	-
Movable property	" Peugeot 306 "- 1996		AUDI A- 3- 2006 GOD. (LOAN) PEUGAUT - 1996. (SOLD)	-	-	-
Monthly salary	500 EUROS	500 EUROS	712 EUROS	-	-	-
Other incomes	-	-	-	-	-	-
CHILD	Blažo Đukanović					
Fixed property	-	-	-	BUSINESS PREMISES IN NON INDUSTRIAL AREA- 412 M2 - PODGORICA (THE ORIGIN OF ACQUISITION – THE CONTRACT ON GIFT)	BUSINESS PREMISES IN NON INDUSTRIAL AREA - 47 M2 (THE ORIGIN OF ACQUISITION – THE CONTRACT ON GIFT)	-
Movable property	-	-	-	-	-	-
Monthly salary	-	-	-	-	-	-
Other incomes	-	-	-	-	-	-

3.3.3. Case study 11: Four walls and the roof

On August 9, MANS submitted the initiative against MP Svetozar Marović, (Vice President of the Ruling Coalition DPS political board and former President of SCG) who did not mention in his Income and Assets Report neither his business nor accommodation space of 98m², 100m² and 90 m² and 18m², owned by his daughter.

ODBIJA SE kao neosnovana i nedozvoljena Inicijativa NVO Mreža za afirmaciju nevladinog sektora - MANS, od 10. avgusta 2007. godine, za utvrđivanje da je Svetozar Marović, bivši poslanik u Skupštini Republike Crne Gore prekršio Zakon o konfliktu interesa.

Obrazloženje

REJECTED IS the Initiative of the NGO "Network for Promotion of NGO Sector" – MANS as of 10 August 2007 submitted for the purpose of establishment whether Svetozar Marovic, a former MP of the Parliament of Montenegro, has violated the Law on Conflict of Interests, due to finding the Initiative ungrounded and contrary to the law.

postupku pred Komisijom za utvrđivanje konflikta interesa, u cilju utvrđivanja činjenica o okolnosti potrebnih za donošenje odluke, a na sjednici održanoj 17. septembra 2007. godine izvela dokaze uvidom u:

- Odgovor (izjašnjenje) Svetozara Marovića od 15. avgusta 2007. godine;
- Izvještaj o prihodima i imovini Svetozara Marovića za 2006. godinu;

Based on the evidences derived, the Commission has found that at the time when Svetozar Marovic, as an MP, submitted his Income and Assets Report, his daughter Milena Marovic was not the owner of real estate (housing and business premises) and that is why he could not have reported that property in his Report. Since Svetozar Marovic has not been a public official as of 4 April 2007, and having in mind the fact that the Initiative as of 10 August 2007 initiates the procedure against a former public official, the Commission has decided in line with the previously taken stand from the Final Decision No. 1688/6 as of 25 May 2007, to reject the Initiative as ungrounded and contrary to the law, instead of establishing retroactively whether or not a public official has violated the Law on Conflict of Interests.

Broj 2011/4
Podgorica, 17. septembar 2007. godine

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

Pouka o pravnom lijeku:

PREDSJEDNIK
Slobodan Leković

In the Decision the Commission states that at the time when Svetozar Marović, as an MP, submitted the Income and Assets Report, his daughter was not the owner of a disputable fixed property any more, since she sold it to the same person she bought it from in the first place about a month after the initial purchase.

In the meantime, Marović did not report changes referring to his property after he had bought flats, neither income changes which were the result of sale of those flats, neither has he reported savings that he would use to finance purchase of disputable real estate.

Date of acquiring property ownership	26 July 2006
Deadline for reporting property changes	10 August 2006
Date of sale of real estate	1 September 2006
Deadline for reporting income changes	15 September 2006

The Commission states that Svetozar Marović has not been a public official as of 4 April 2007 and thus the Commission rejects the Initiative as ungrounded and contrary to the Law "instead of establishing retroactively whether or not a public official has violated the Law on Conflict of Interests".

Extract from the interview with Svetozar Marović in the TV show "Naked truth" broadcasted in TV "IN"

Question: *The Law says that public officials should report their assets. If the truth is what we read in the newspapers, then you have forgotten to report, neither more nor less than three flats and a business premises officially owned by one of the members of your family, and even Aristotle would agree that in the country where average salary is 350 €, to have three flats and a business premises is almost a fortune.*

Svetozar Marović's answer: *I am glad that you have asked me that. I have to say that it is not true, not right, I have already responded in written and explained that unfortunately those flats do not exist. I would like to have them, really I would. I hope to have them soon, to have them legally, to register them, to pay taxes for a year, or two, I'll see, if I decide to invest my money and capital in flats, even though I think that is stupid.*

First, it is true that in one part of Budva there are four walls and one roof, there is nothing else but the beginning of construction works of a unique construction object which could maybe have, if I may say, a kitchen, several rooms, and maybe in some square meters it may be such. But that was mine for some ... not mine, but my daughters, it was registered to her for several, about ten days.

We have bought it maybe about two years ago, year and a half ago, and then when we thought of how much we should invest, since I have still been living in the flat of 82 m2, you can all come ... I am inviting all the ones who do not believe to come with me, to see, I can also take them to this object too.

Article from daily "Vijesti", 27 October 2007:

A popular citizen of Budva has bought through his company Moninvest 2.2 percent of shares of "Prva banka" (the First Bank) for half a million euros:

Marović earned 3 million per day

Podgorica – Company "Moninvest" from Budva whose partner in ownership is a Vice President of DPS Svetozar Marović, has bought 2.2 percent of shares of the First Bank for a half a million euros - "Vijesti" have learnt.

Business was made in the so called closed issue of shares (recapitalization) that do not go to the stock market, and data are not publicly available.

In the case of closed recapitalization, a buyer is known in advance and shares are transferred to his/her name after the complete amount is paid to the bank account, which is allowed according to Montenegrin regulations.

The company "Moninvest" with head offices in Budva, owned by Marović and Dragan Sekulić, has bought 3.920 shares of the First Bank for a half a million euros, or 127 euros per share, which is the face value. "Moninvest" was founded in 2002, and Marović has formally become a partner in the first half of this year.

At the same time the object that we have bought from a concrete previous owner , maybe just one month later, we have turned back for the same amount of money since we have estimated that it is not profitable to invest money to make this object functional. This means that that Purchase Contract and that Contract of Purchase Contract Termination were submitted to the Commission for Establishment of Conflict of Interests and I believe that the Commission will explain it timely, that is when it comes to its agenda.

I do not want to compete in newspapers, to contradict all those who invent new truths every day or interpret those truths wrongly , if I may say so. I think that our duty is to say the truth and I have submitted that truth to the Commission for Establishment of Conflict of Interests. ...

Question: *Did you register data about value of your son's car?*

Svetozar Marović's answer: *My son has a car. That car is a Mercedes, jeep Mercedes that was bought on leasing. He was a volleyball player, he had his own income, today he runs his own business, has its business and his income and he is an adult man. He is twenty and something years old, 24-5, and he is not living with me neither with my wife, nor with my daughter.*

He has his own life, his business, but about his car, since that is probably interesting, that is so. This means that anyone can check it, anyone can go, to see how the car was bought, what is the installment, how much he paid, just like hundreds of other people that buy such cars in a similar way. Why did he buy that very car, well I have to admit that this is probably the matter of his personal choice, personal taste, no matter if other people like it or not. He played volleyball and he decided to stop playing it because he considered those tens thousands of euros that he earned a year by playing volleyball as insufficient for what he can do.

Today he has a group of his own friends, of his generation, and friends a little bit older than him, that are in construction business and I think that I will recognize in him very soon a good lender for some of my businesses.

Value of shares of the First Bank in the stock market is about 900 euros, which means that every participant in recapitalization process is a winner in advance.

In that way Marovic's company has according to the market price of shares earned immediately about three million euros.

Vice President of DPS is also a member of the Board of Directors of "HTP Budvanska rivijera" (hotel and tourist company) and "Barska plovdba" (a company that deals with maritime affairs) from Bar.

Apart from Marović, in the closed process of recapitalization, shares of the First Bank were bought by two companies and several physical entities among which there are the members of the Board of Directors, Vuk Rajković and Goran Rakočević, but in much lower amounts.

Several months before the Vice President of DPS did it, leader of that party, Milo Đukanović, through the company "Capital invest" became the owner of about seven percent of shares of the First Bank and he bought his shares in the amount of 1.500.000 € through the process of recapitalization.

Đukanović's share, according to the actual prices on the stock market, is about 10 million €.

The majority shares owner of the First Bank is company "Monte nova" owned by Aco Đukanović, with about 30 percent of shares.

Shareholders of the First Bank are the companies "Elektroprivreda", "Lovćen osiguranje", "Maprenat", "Global", "Stadion", "HTP Fjord", "Comersa", "Rudnici boksita", "Monte adria broker"...

3.4. Doing other business

The Law on Conflict of Interests stipulates that a public official may be engaged in another job if the Commission has previously determined that such engagement will not generate any conflict of interests, and with consent of the body that has elected him/her, that is, appointed him/her, and the public official is obliged to report gaining of income coming from that engagement.

The Law allows public officials, except the members of government, judges and prosecutors to be members of the Board of Directors of only one business company owner by the state, that is, by a unit of local self governance, and they are obliged to report their office and income they gain based on it to the Commission for Establishment of Conflict of Interests.

3.4.1. Case study 12: Membership in the Board of Directors of the "non-existing" company

On June 21, 2006, MANS submitted the initiative against dr Radonja Minić, Assistant to the Minister of Economy for mining and geology because he was performing duties that are contrary to his public office. Minić was at that time a member of the Board of Directors of "AD Željezara" Nikšić and "AD Boksiti" Cetinje, a company that deals with exploitation of bauxite and he was also a member of a tender commission for privatization of the competitive company "AD Boksiti" Nikšić.

Being the Assistant to the Minister, Minić makes decisions that can directly influence financial interests of "AD Boksiti" – Cetinje whose Board of Directors member he is, by giving concessions and control, and by elimination of competitive companies. He participates in processing of the requests for granting concessions and he proposes to the Government to make decisions and sign contracts on concessions for exploitation of mine, he monitors realization of contracts on concessions and makes the annual accrual of the concession fee as well as the operations of the inspection surveillance over execution of the law in the area of mining industry.

Minić has reported to the Commission for Establishment of Conflict of Interests only his membership in the Board of Directors in "Željezara" Nikšić, in which he has shares, and he has hid the fact that he is a President of the Board of Directors of "AD Boksiti" Cetinje. Apart from that, Minić has "forgotten" to report incomes he gains on these grounds.

Since the Law on Conflict of Interests treats every income of public officials that have not been reported to the Commission as illegally acquired, MANS has requested the Commission to inform the Supreme Public Prosecutor about illegal gaining of income.

Commission for Establishment of Conflict of Interests reached a decision on 15 August that dr Radonja Minić has violated the Law on Conflict of Interests, by performing duties of the member of Board of Directors in "AD Boksiti" Cetinje. The Commission also states that for membership in that Board of Directors Minić did not receive any fee so could not have reported any income earned on those basis. Radonja Minić, nezadovoljan odlukom Komisije, podnosi zahtjev za njeno preispitivanje u kome ističe Radonja Minić, unsatisfied with the decision of the Commission submits the request for reexamination of the decision and he states that he has not been violating the Law since:

- "the company "AD Boksiti" is in a way "non-existing" and it is only formally registered
- "the company "AD Boksiti" has no instruments of labour, no facilities, no workers employed (only two registered), it is without any income and performs no activities at all, not only now, but for the last eighteen years, and according to some present scientific and specialist knowledge, the question is whether and when it will be sold. The company owns only the land that is pure rocks and bushes ..."

ŽALBA

POSREDOVANJE U REŠAVANJU
KONFLIKATA
15.08.2006
23.08.2006
EPOS 1473/10

Podnosim žalbu na ODLUKU br.1473/8 koju je donijela Komisija za

I am accused to have been a member of the Board of Directors of the Company "Boksiti" Cetinje that is in a way the "non-existing" company that has only formally been registered. I would like to remind the Commission that it has not taken into consideration the following facts: the company "Boksiti" has no instruments of labor in its possession, no facilities, no workers employed (only two registered) , it is without any income and it doesn't do anything at all not only now but for the last 18 years and according to some present scientific and specialist knowledge, the question is whether and when it will be sold. The company owns only the land that is pure rocks and bushes in the region of Bijele Poljanje and in dept at some points some bauxite has been found but it has not been examined properly yet, and according to the researches conducted so far, it is not of a good quality. Until the beginning of this year the company was in bankruptcy. So can it be that membership in the Board of Directors of such company is a conflict of interests? The only reason why I was interested in "Boksiti" Cetinje is because of specialist - professional reasons.

stodava javnog informisanja da se i to kvalifikuje kao konflikt interesa. Imajući u vidu to i Odluku koju ste Vi donjeli neshvatljivo mi je da je takvo moje shvatanje i razumjevanje zabluda.

Komisija je morala cijeniti i činjenicu da se zakon o konfliktu interesa primjenjuje odnečavno, a i njegovo tumačenje je u djelu nejasno pa i u djelu funkcije pomoćnika ministra, a kvalifikacija "bio je u konfliktu interesa" je selektivno tendencijozna ako se ima u vidu od početka primjene zakona.

Ako sam i bio u konfliktu interesa, kao što je okvalifikovala Vaša Komisija u svojoj Odluci, morali ste cijeniti i činjenicu da sam odmah podnio ostavku kada sam saznao da se moje učešće u odboru direktora i takvog preduzeća tumači kao

konflikt interesa. Komisija je takođe morala cijeniti i činjenice: da sam bio član odbora direktora tog preduzeća svega tri mjeseca i da za to nijesam dohivao nikakvu materijalnu naknadu, i činjenicu da u vrijeme postupka i donošenja Vaše Odluke ja nijesam bio član odbora direktora "Boksita" Cetinje niti u konfliktu interesa.

Očekujem da će te s pažnjom razmotriti ovu žalbu i po mom ubjeđenju ovaj moj jedinstven slučaj, a uvažavajući činjenice i stvarno stanje poništiti Odluku ranije donesenu.

Podgorica, 21.08.2006 godine

Prilog: Ostavka na članstvo
u odboru direktora

PODNOŠILAC ŽALBE

Dr Radonja Minić

Ministry of Economy, whose Assistant to the Minister Minić is, had a year before bringing up the initiative signed the contract with the Company for which Minić says it is "non-existing" on extension of validity of right to exploit bauxite.

Република Црна Гора
МИНИСТАРСТВО ЕКОНОМИЈЕ

број: 01.993,

Подгорица, 20.03.2006 год.

2006 26 03
04-00

1. Vlada Republike Crne Gore – Ministarstvo ekonomije (u daljem tekstu "Davalac koncesije") koje zastupa ministar mr Predrag Bošković, s jedne strane

2. Akcionarsko društvo "Boksiti" – Cetinje (u daljem tekstu "Koncesionar"), koje zastupa izvršni direktor Dragoljub Radonjić, s druge strane

Dana _____ 2006. godine, u Podgorici, zaključili su

UGOVOR

o produženju prava na eksploataciju bijelog boksita na ležištima "Ravna aluga", "Trebovinski pod" i "Poljane", Opština Cetinje

Član 22

Ovaj ugovor stupa na snagu danom potpisivanja, a primjenjivaće se od 01.01.2006. godine.



DAVALAČ KONCESIJE

mr Predrag Bošković

ZA KONCESINARA

Dragoljub Radonjić

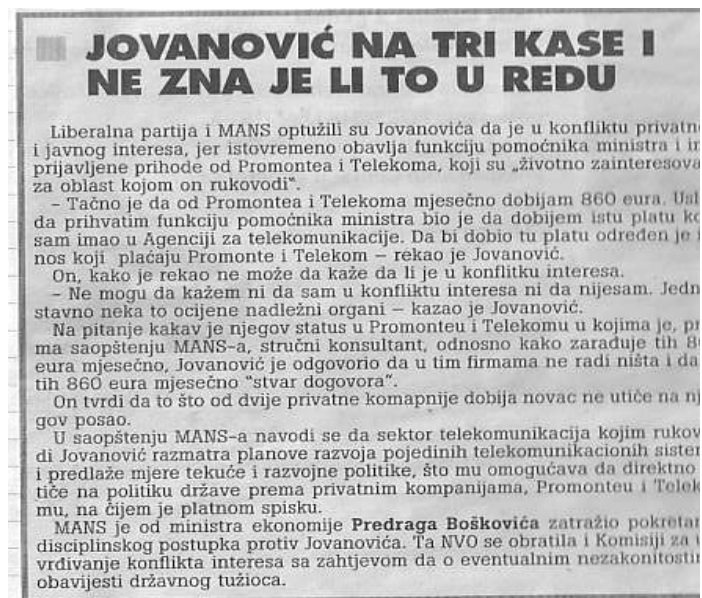
The Commission for Establishment of Conflict of Interests adopts the request for reexamination and reaches a decision that Minić has violated the Law until 22 June 2006, one day after MANS had submitted its initiative when he resigned from the position of the member of the Board of Directors of "AD Boksiti" Cetinje, which thus makes his actions in line with the Law on Conflict of Interests.

The Commission states that for membership in that Board of Directors Minić did not officially receive any fee and he could not thus report any income based on these grounds.

3.4.2. Case study 13: Sponsors without any account

MANS has submitted to the Commission for Establishment of Conflict of Interests the initiative against Dejan Jovanović, Assistant to the Minister of Economy for the Department of Telecommunication, who is at the same time an Expert Advisor in telecommunication companies, "Promonte" and "Telekom" and he is paid a fee in the amount of 860 euros per month for these services.

Department for telecommunication, run by Jovanović, among other things had been considering the plans of development of some telecommunication systems and proposed measures for the current and development policy which enabled him to influence the state policy towards private companies, "Promonte" and "Telekom", whose payroll list he was on, and whose economic interest is undisputedly contrary to the interests of citizens as consumers.



In his comment to the Initiative, Dejan Jovanović says:

"It is true that from "Promonte" and "Telekom" I receive 860 € per month. Condition to accept this position of the Assistant to the Minister was to be paid the same salary I had in the Agency for Telecommunications. In order to be paid that salary, the amounts paid by "Promonte" and "Telekom" were taken as a basis.

I cannot say I neither was nor was not making conflict of interests. This should simply be evaluated by the authorized bodies.

In those companies I do nothing and those 860 € per month is the matter of the agreement. The fact that I receive money from two private companies does not influence the way I do my job ."²⁵

Commission for Establishment of Conflict of Interests makes a decision that Jovanović is not violating the Law and states the following:

"The Commission has evaluated the proofs derived, and has established that Dejan Jovanović, Assistant to the Minister of Economy as a public official is not violating the Law on Conflict of Interests by receiving a fee for Expert Advisor services from the telecommunication operators "Promonte" and "Telekom". The Law on Conflict of Interests does not foresee the ban, that is, actions contrary to the Law which would enable him/her to perform another job and to receive fees based on those grounds, but he/she is obliged to report the fee as his/her income, which the above mentioned person has done."

²⁵ Dnevni list „Vijesti“, 05.12.2007

3.5. Reporting gifts

According to the Law on Conflict of Interests public official is obliged to report within 15 days the gift s/he received, whose value is above 50 euros, which shall remain the property of the state.

Property that the public official gained during the term of his/her office, which has never been reported to the Commission for Establishment of Conflict of Interests, shall be considered illegally acquired and the Commission shall inform the Public Prosecutor about it.

As of the time this Law came into force, until 2007, out of more than 1800 public officials, only nine reported the gifts whose value was above 50 euros.

Name and position	Reporting date	Number and type of presents reported
Kankaraš Miodrag, Mayor of Tivat	14 Nov 2006	1, fountain pen
Vesna Medenica, Supreme Public Prosecutor	24 Jan 2007	1, table watch
Filip Vujanović, President of the Republic	- 09 Nov 2007	21, - 6, -
Slobodan Leković, President of the Commission for Conflict of Interests	15 Jan 2007 01 Oct 2007	1, painting 1, piece of art work in frame
Rajko Kuljača, Mayor of Budva	28 Feb 2007	1, wrist watch
Ljubiša Krgović, President of the Council of The Central Bank	28 Feb 2007	1, painig
Ranko Krivokapić, President of the Constitutional Assembly	25 May 2007	2, painting
Željko Šturanović, Prime Minister	13 Sept 2007	1, sculpture
Predrag Sekulić, Minister of Culture, Sport and Media	12 Oct 2007	9, -

3.5.1. Case study 14: I give you a company, and you give me what?

Mayor of Tivat, Dragan Kankaraš was the first public official who on November 14, 2006 reported to the Commission for Establishing of Conflic of Interests the gift of a bigger value. That is a golden fountain pen, "Cartier" that Kankaraš received as a gift from the Canadian billionaire Peter Monk at the event of signing of the contract on sale of Tivat company "Arsenal".

The Sale Contract of "Arsenal" to the company "PM Securities" owned by Peter Monk was signed on October 28, 2006, and apart form Kankaraš, other members of the tender commission, and at the time Prime Minister Milo Đukanović²⁶ also received the same type of watch as a gift, but they did not report their gifts by the end of 2007.



²⁶ Dnevni list „Vijesti“, 25.01.2007

3.5.2. Case study 15: Russian – Montenegrin friendly gifts



Poklon od ruskog tužioca

In a magazine "Index", a January issue, in the interview with Vesna Medenica, Supreme Public Prosecutor, supported with personal and family photos, there is a photo of a watch for which it is said that is a "gift from the Russian Prosecutor".

After the initiative brought to the Commission for Establishment of Conflict of Interests in order to examine the circumstances under which Medenica received her clock as a gift, where it is now, what is its value, and whether it was registered by the Commission, Vesna Medenica has said to the media that the clock she had received her Russian colleague is not a gift to the public official, but that it was a friendly clock that she would have reported to the Commission for Establishment of Conflict of Interests if it had had such a large value.

*"That clock I got as Vesna Medenica, not as a Supreme Public Prosecutor. Russian Prosecutor has told me then: you will always have a sincere friend and this is a memory of me. The clock is not any brand, it is not neither golden nor silver, that is ordinary craftsman filigree and souvenir. If it had some big value, I would have reported it."*²⁷

After the initiative submitted at the beginning of 2007, Medenica has submitted to the Commission for Establishment of Conflict of Interests the watch that Medenica got as a gift from her Russian colleague²⁸, and President of that Commission mentioned that he does not know how to establish the value of that clock²⁹.

The disputable clock is still in possession of the Commission which did not find the way to estimate its value.³⁰

²⁷ Daily "Vijesti", 19 January 2007

²⁸ Daily "Vijesti", 25 January 2007

²⁹ Daily "Vijesti", 26 January 2007

³⁰ Daily «Dan», 22 November 2007.

ANEXES

List of members of the government and various companies of which they were directors

Law on Conflict of Interest

Annex 1: LIST OF MEMBERS OF THE GOVERNMENT AND VARIOUS COMPANIES OF WHICH THEY WERE DIRECTORS

- Miroslav Ivanišević, Vice-President of the Government
 - President of the Board of Directors of the Port of Bar
 - Member of the Management board of the Central Depository Agency.
- Branimir Gvozdenović, Vice-President of the Government
 - President of the Board of Directors of the Power Supply Company of Montenegro
- Jusuf Kalamperović, Vice-President of the Government
 - Member of the Board of Directors of Montenegro Airlines
- Dragan Đurović, Internal Affairs Minister
 - Member of the Board of Directors of Budvanska rivijera
- Gordana Đurović, Minister for European Integrations and Foreign Economic Relations
 - Founder of the NGO Macro-management Centre and
 - The wife of Šaleta Đurović, assistant to the Director of the Agency for Economic Restructuring and Foreign Investments, member of the board of Directors of Montenegro Airlines and Montenegro Stock Exchange
- Slavoljub Stijepović, Minister of Labor and Social Welfare
 - member of the Management board of the Post of Montenegro,
 - member of the Management board of Zetatrans,
 - member of the Management board of the Employment Agency
- Željko Šturanović, Minister of Justice
 - Member of the Management board of the Post
- Predrag Nenezić, Minister of Tourism
 - Member of Montenegro Airlines Management
 - Member of the Coastal Zone Management
- Milutin Simović, Minister of Agriculture
 - Member of the Management of Plantaže
 - Member of the Board of Directors of Montenegrobonus
- Darko Uskoković, Minister of Economy
 - Member of Management of Telekom
 - Member of the Board of Directors of Montenegrobonus

Annex 2: LAW ON THE CONFLICT OF INTERESTS

I GENERAL PROVISIONS

Article 1

With the purpose of raise confidence in legitimate and impartial performance of public functions, this law shall identify the conflict of public and private interests (hereinafter referred to as: conflict of interests) and govern the ways of avoiding the conflict of interests, as well as other issues relevant for the implementation of this law.

Scope of implementation

Article 2

This law refers to public functionaries and persons connected to them.

A public functionary, as used in this law, shall be understood to mean the person elected by direct and secret vote, person elected by the Parliament of the Republic of Montenegro (hereinafter referred to as: Parliament), or appointed by the Government of the Republic of Montenegro, as well as a mayor, that is the president of the local council.

Article 3

A public functionary shall perform his duties impartially, in accordance with the Constitution, law and other regulations, taking into account the ethics of his profession and the office he holds.

A public functionary shall not be allowed to give priority to his private interest over a public interest in a way that affects or could affect his performance of the public function.

II DEFINITIONS

Article 4

Certain terms, as used in this law, shall have the following meaning:

Conflict of interests – there is a conflict of interests when a public functionary gives priority to a private interest over a public interest so as to gain material benefit or privilege (hereinafter referred to as: benefit) for himself or persons connected to him.

Persons connected to a public functionary – direct relatives of a public functionary, collateral relative up to the second degree, relatives through wife's family up to the first level, a marital or extra-marital partner, adoptive parent or adoptive child, as well as other persons that a public functionary is personally or professionally connected to.

Gift of considerable value - money, securities or other object that is either received or given the value of which exceeds the amount of EUR 50.

Service – activity allowing for conditions for obtaining of benefit.

III IMPERMISSIBLE CONDUCT

Article 5

A public functionary is not allowed to:

- accept a gift of large value, profit or a service, except in cases envisaged by this law;
- favor citizens on the basis of their political or other affiliation, origin, personal links or links through immediate or broader family;
- abuse information he has acquired during his position in a public office, and
- exert influence over public procurement procedure.

Action to be taken by a public functionary found in a conflict of interests

Article 6

Should a public functionary have doubts that there is a conflict of interests, he shall report that to the Committee for the Conflict of Interest (hereinafter referred to as: Committee) in order for Committee to decide whether he/she is position of conflict of interest.

Influencing impartiality of a public functionary

Article 7

A public functionary has the duty to immediately inform the Committee of such an influence or impermissible action carried out during his performance of a public office.

Should the Committee find that the action referred to in Para. 1 of this Article can be qualified as a criminal offense, it shall immediately report that to the Prosecutor General.

IV DISCLOSURE FORMS

Submission of disclosure forms

Article 8

It is the duty of a public functionary to submit disclosure forms on his income and property for himself, his spouse, his extramarital partner, and his children living in the same household (hereinafter referred to as: disclosure forms) within 15 days of the date he entered upon a public office.

During the term of office, it is the duty of a public functionary to submit such a disclosure form to the Committee annually, by the end of February of each year.

It is the duty of a public functionary to inform the Committee of every change in his property exceeding the amount of EUR 2000 within 15 days of the day when such a change took place.

After the expiry of the term of office, it is the duty of a public functionary to submit the disclosure forms to the Committee related to the period of time during which, according to regulations, he is entitled to rights and duties arising from such a public office.

Filling out disclosure forms

Article 9

A public functionary shall fill out the disclosure form the content of which is set out by the Committee.

A public functionary shall be responsible for accuracy of data in the disclosure forms.

An incomplete or wrongfully completed disclosure form shall be returned by the Committee to the relevant public functionary who must remove, within eight days of receipt, all errors and irregularities.

Register of disclosure forms

Article 10

The Committee shall keep the Register of disclosure forms on income and property of a public functionary, his spouse or extramarital partner and his children living in the same household (hereinafter referred to as: Register of disclosure forms)

The Committee shall issue a notice of receipt upon entry in the Register of disclosure forms.

The Register of disclosure forms shall be published by the Committee in the media.

At the order of a state authority and local government authority, the Committee shall immediately present it with the data from the Register of disclosure forms.

V INCOME, PROPERTY AND GIFTS

Illegally earned income and property

Article 11

The Income and property that a public functionary, his spouse or extramarital partner and his children living in the same household have acquired during his term of office but have not been reported to the Committee, or is not covered by appropriate documentation, shall be considered illegally acquired income or property, as used in this law. The Committee shall inform the Prosecutor General of the Republic of Montenegro of that.

Receipt and disclosure of gifts of considerable value

Article 12

A public functionary can receive a gift of considerable value that he is obliged to disclose to the Committee within 15 days of the date of receipt of such a gift.

The gift of considerable value shall become state property.

Value of gifts

Article 13

The Committee shall establish the value of the gift according to its market value on the day of receipt of such a gift.

VI HOLDING OF OTHER POSITIONS

Article 14

If the Committee has previously found that it does not cause a conflict of interests, a public functionary shall be allowed to hold another position following the approval of the authority that has elected and appointed the public functionary.

Pursuant to Article 8 of this law, a public functionary shall have the duty to disclose to the Committee the income acquired in an additional position.

For the work done in a public function, a public functionary shall not be allowed to receive fees from other state or international organization or institution, except for travel and other similar costs.

Membership in company boards

Article 15

A public functionary cannot be a member of a company board, except shareholders Assembly.

Exceptionally, a public functionary, except Government members, judges of the Constitution court, judges, state prosecutor and deputy state prosecutor, can be a member of a the board in a company whose owner is the state but shall not be entitled to any fee, except to travel and other similar costs.

A public functionary who is the owner of a company shall have to transfer his management rights to other person within 15 days of the day he enters upon office, except to persons stated in article 4, paragraph 1, line 2 or other body.

Membership in non-governmental organizations and other legal entities

Article 16

A public functionary can be a member of non-governmental organizations and other legal entities engaged in research, humanitarian, cultural, sports, or other similar activity, but shall not be entitled to any fees, except for travel and other similar costs.

VII COMMITTEE

Article 17

A special Committee referred to in Article 6 of this law shall be set up as an independent body for the establishment of conflict of interests.

The Committee shall be set up by the Parliament.

Committee members

Article 18

The Committee shall have five members, of whom one shall perform the function of the president.

Committee members shall be elected by the Parliament at the proposal of the proper parliamentary board for the five year term of office, with the possibility of reappointment.

Committee members shall be persons who have proved their impartiality and conscience through their professional and moral values. At least one Committee member must be a holder of law degree and bar examination certificate.

Committee members are entitled a fee for their work, defined by proper parliamentary board.

Scope of authority of the Committee

Article 19

The Committee shall:

- establish facts and circumstances relevant for the decision;
- take a decision, accompanied by an explanatory note, on whether there is a conflict of interests in a given case;
- establish the value of a gift;
- keep Register of disclosure forms;
- adopt Rules of Procedure;
- carry out other work, as envisaged by this law.

The Committee Rules of Procedure shall prescribe in greater detail the work procedure and other issues relevant for the work of the Committee.

Procedure before the Committee

Article 20

The procedure before the Committee shall be initiated by a public functionary, state authority, local government authority, legal and physical entities or Committee members.

The Committee shall examine every report on the potential conflict of interests.

Before the decision is taken, the Committee shall inform in writing the public functionary of the report and require of him to declare himself.

Article 21

A public functionary shall have to declare himself in writing within 15 days of the day of receipt of such a request.

If a public functionary fails to declare himself within the time period referred to in Para. 1 of this Article, the Committee shall pass the decision without such declaration.

Article 22

The Committee shall propose to the proper authority to remove a public functionary from his office if it finds that there is a conflict of interests or if the public functionary fails to submit the report referred to in Article 8 of this law, or if he fails to remove errors and irregularities concerning Article 9 of this law.

If the Committee finds that a public functionary has committed a crime, he shall immediately submit a report to the state prosecutor in charge.

Funds for the work of the Committee

Article 23

Funds for the work of the Committee shall be provided by the Budget of the Republic of Montenegro at the proposal of the Committee.

Transparency of the work of the Committee

Article 24

The Committee decisions on the conflict of interests shall be delivered to the media.

The Committee shall submit the report on its work to the Parliament when necessary, at least once a year.

VIII TRANSITIONAL AND CONCLUDING PROVISIONS

Article 25

The Parliament shall set up the Committee within 90 days of the day this law comes into force.

Article 26

The Committee shall adopt rules, forms, and Rules of Procedure within 90 days of the day it is set up.

Article 27

Rights, obligations, and responsibilities constituted by this law shall also refer to a public functionary who is holding a public office at the time this law comes into force.

A public functionary referred to in Para. 1 of this Article shall submit a disclosure form to the Committee within 15 days of the day rules, forms and Rules of Procedure are adopted.

Coming into force

Article 28

This law shall come into force on the eighth day of its publication in the "Official Gazette of the Republic of Montenegro".